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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 201.

SILAS S. HUNTLEY, APPELLANT,

vs.

CHARLES C. HUNTLEY AND BRADLEY BARLOW.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MAY 2, 1882.

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1 In the Supreme Court of the District of Columbia. Equity.

SILAS S. HUNTLEY
vs.
CHARLES C. HUNTLEY, BRADLEY BARLOW, and ADAM E. SMITH. } No. 6558.

To the supreme court of the District of Columbia, sitting in equity:

Silas S. Huntley brings this his bill of complaint against the above-named defendants, and avers and complains as follows:

First. That he is a resident of the District of Columbia, and brings this suit in his own right.

Second. That the said Charles C. Huntley is also a resident of the District of Columbia; the said Adam E. Smith is a resident of the city of Baltimore, State of Maryland; and the said Bradley Barlow is a citizen and resident of the State of Vermont.

Third. That the plaintiff and the defendants were the owners of certain stock, property, and effects of what was known as the Northwest Stage Company, which was engaged in the transportation of the United States mails over certain mail routes operated by said company under contracts with the Post Office Department.

Fourth. That by an instrument in writing under seal, dated December 22, 1874, executed by each of said parties, the interest of each in the property of said company, and in the profits and losses and expenses attending the operation of certain mail routes,
2 is distinctly set forth and agreed upon—the said Bradley Barlow having a one-half interest, the said C. C. Huntley and myself a one-third interest, and the said Adam E. Smith a one-sixth interest. A true copy of said contract is filed herewith as part of this bill, marked "Exhibit S. S. H., No. 1."

Fifth. Under the terms of said contract the said Barlow was given full power and authority to collect the pay on said mail routes during the then contract term, which expired June 30, 1878, for the benefit of all the parties named in said contract, and in the proportions therein stated.

Sixth. That said Barlow purchased the interest of the said Adam E. Smith in said contract, and the plaintiff believes, and so charges, that said Smith no longer has any interest in or under the same.

Seventh. That said Barlow has collected all the mail pay on said routes up to the expiration of said contract term, June 30, 1878, amounting to large sums of money; that a settlement was had with him up to September 30, 1875, when he brought the said C. C. Huntley and myself in debt to him (which has been paid), the company having operated at a loss. Since that time the routes operated by said company have been run at a profit, and said Barlow has furnished no statement of account and made no settlement.

Eighth. The plaintiff has frequently requested the said Barlow to give him a statement of account, and to pay him something on account of what was due him on his one-sixth interest, but said Barlow has refused, and still refuses, to render any statement of account or to pay him any money; that the mail routes operated by the

said Northwest Stage Company, consisting of the parties aforesaid, are the following, to wit: No. 42101, Boise City to Winnemucca; No. 41131, Kelton to The Dalles; No. 42121, Silver City to South Mountain; No. 43129, Walla Walla to Wallula; No. 44149, Baker City to Sparta; No. 44152, Canyon City to Camp McDermot; No. 42102, Boise City to Placerville; No. 42103, Boise City to Rocky Bar; No. 44140, The Dalles to Boise City; No. 44143, Pendleton to Scotts; No. 45129, Elke to Mountain City; No. 42109, Silver City to Jordan Valley—from which, as the plaintiff is informed and believes, the said Barlow, under said agreement, has collected
3 for mail pay from the Post Office Department about the sum of two hundred and fifty thousand dollars per annum.

Ninth. That said Barlow is now temporarily in this city, but is a non-resident, his home being in the State of Vermont.

Tenth. That the plaintiff is unable to state the amount of money collected by said Barlow from said mail routes, or the amount expended in the cost of transportation of mails over the same, as said Barlow refuses and neglects to render any statement thereof.

10th *a*. That subsequent to June 30, 1878, said Barlow sold all the property and effects of said Northwest Stage Company, as the plaintiff is informed and believes, for the sum of $75,000, for which he has rendered no account, although receiving the proceeds of said sale.

10th *b*. That the said C. C. Huntley, as the plaintiff is informed and believes, and so avers, is largely indebted unto said Barlow on private account, and plaintiff believes that said Barlow is endeavoring to apply said moneys in which he (the plaintiff) is interested to liquidate the said individual indebtedness of the said C. C. Huntley to himself, said Barlow at times intimating that he has so applied the money, and that there is nothing due the plaintiff, and at other times stating as a reason for not making a statement of account and settlement with the plaintiff that the said C. C. Huntley had given him notice not to pay anything to the plaintiff.

10th *c*. That there is a dispute between the said C. C. Huntley and the plaintiff as to some settlement of accounts between them, and a suit pending relative thereto, and the said C. C. Huntley would not unite with the plaintiff in filing this bill.

And the plaintiff is apprehensive that he and the said Barlow may combine in making some settlement by which to defraud the plaintiff of the benefit of his said one-sixth interest in the proceeds of said sale and receipts of said mail pay by said Barlow.

That said Barlow a short time ago intimated that as said one-third interest belonged to C. C. and S. S. Huntley, he had a right to make payments thereon to the said C. C. Huntley alone. Whereupon plaintiff gave him notice in writing not to do so, said Barlow
4 well knowing, long previous thereto, that there were matters in dispute between the said C. C. Huntley and the plaintiff relative to the proceeds of other mail routes, as to which a suit was pending, and that neither of us would consent to said Barlow paying the other any money for both.

And the plaintiff avers that if any such payments have been made

by said Barlow to said C. C. Huntley, they have been made wilfully, illegally, and for the purpose of defrauding the plaintiff of his just rights.

Eleventh. Wherefore, inasmuch as the plaintiff is without remedy at law, and can only have relief in a court of equity, he prays as follows:

Prayers.

First. That the said Charles C. Huntley, Adam E. Smith, and Bradley Barlow may be made parties defendant hereto and required to answer this bill under oath as fully and particularly as if specially interrogated thereto.

Second. That the said Bradley Barlow be required to render a full, detailed, and specific account, showing all sums of money collected by him under the provisions of said contract set forth in Exhibit S. S. H., No. 1, and all moneys properly expended on account thereof.

Third. That a full accounting may be had in respect of the subject-matter of this suit, and the said Bradley Barlow be decreed to pay to the plaintiff the amount justly due him.

3d *a*. That said Barlow be enjoined from paying to the said C. C. Huntley, his agents or assigns, any portion of the plaintiff's one-sixth interest in the proceeds of said sale and collections of mail pay made by said Barlow.

3d *b*. That said Barlow be required to state specifically what sums of money of the proceeds of said sale and collections he has paid to the said C. C. Huntley, and when.

3d *c*. That said Barlow be required to state specifically what sums of money of the proceeds of said sale and collections he has credited the said C. C. Huntley with on his individual account with him, and charged to the one-third interest under said contract due to C. C. and S. S. Huntley.

3d *d*. That if the said C. C. Huntley has received from the said Barlow any portion of the plaintiff's one-sixth interest as aforesaid, he may be decreed to pay the same to the plaintiff within a limited time, and in default of said payment that said Barlow be decreed to pay the same to the plaintiff.

Fourth. That the amount in the hands of said Barlow be ascertained under the directions of the court.

Fifth. That a receiver may be appointed by the court, to whom said Barlow shall be required to pay over the amount of money in his hands belonging to the plaintiff.

Sixth. That the plaintiff may have such other and further relief as the nature of his case may require and to the court may seem meet.

Seventh. That the writ of subpœna be issued directed to said defendants, commanding them, &c.

S. S. HUNTLEY.

I do solemnly swear that I have read the bill by me subscribed, and know the contents thereof, and that the facts therein stated upon

my personal knowledge are true, and that the facts therein stated upon information and belief I belief to be true.

S. S. HUNTLEY.

Subscribed and sworn to before me, this eleventh day of December, A. D. 1878.

[SEAL.] DANIEL O'C. CALLAGHAN,
Notary Public.

EXHIBIT S. S. H., No. 1.

Know all men by these presents, that whereas Bradley Barlow is the owner of one-half of the stock, property, and effects of what was known as the Northwest Stage Company, and S. S. and C. C. Huntley are the owners of one-third of said property, and Adam E. Smith is the owner of one-sixth of said property, and each of the said parties share respectively in the above proportions in all the mail routes lately operated by said company, and are to share in the future on all those routes in the above proportions in the ownership, profits, losses, and expenses appertaining thereto or incident to the obtaining said mail routes, and it is agreed between us that the said Barlow shall have full power and authority to collect the pay on said routes during the present contract term for the benefit of the said parties herein named in the proportions to each party hereinbefore stated, and that full powers of attorney in all cases shall be made and delivered to the said Barlow to collect all mail pay on all routes now owned or hereinafter acquired by the aforesaid parties, or either of them, in the territory embraced by the service of the late Northwest Stage Company.

In witness whereof, we have hereunto set our hands and seals, this 22d day of December, A. D. 1874.

BRADLEY BARLOW. [SEAL.]
C. C. HUNTLEY. [SEAL.]
S. S. HUNTLEY. [SEAL.]
ADAM E. SMITH. [SEAL.]

In the presence of—
J. L. SANDERSON.

(Indorsed:) No. 6558. Equity doc. 19. Silas S. Huntley *vs.* Bradley Barlow, Charles C. Huntley, and Adam E. Smith. File this bill and Exhibit S. S. H., No. 1, and issue as prayed. Wm. F. Mattingly, sol'r for pl'ff. Filed Dec. 14, 1878. R. J. Meigs, clerk.

Subpœna to Answer.

In the Supreme Court of the District of Columbia, the 14th day of December, 1878.

SILAS S. HUNTLEY, Complainant, *against* BRADLEY BARLOW *et al.*, Defendants. } No. 6558. Eq'y dock. 19.

The President of the United States to Bradley Barlow, Charles C. Huntley, and Adam E. Smith, defendants:

You are hereby commanded to appear in this court, at its first

special term, occurring twenty days after service of this subpœna, and answer the exigency of this bill this day filed, and entitled as above, under pain of attachment, and such other process of contempt as the court shall award.

Witness D. K. Cartter, Chief Justice.

[SEAL.] R. J. MEIGS, *Clerk*,
By M. A. CLANCEY, *Ass't Clerk*.

7 Memorandum.—That the defendants herewith served is to enter their appearance in this suit, in the clerk's office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

(Endorsed:) No. 6558. Equity docket 19. Silas S. Huntley *vs.* Bradley Barlow *et al.* Issued Dec. 14, 1878. Summoned and served rule to show cause on Bradley Barlow, and sum'd Chas. C. Huntley Dec. 14, 1878. F. Douglas, marshal. S'd served B. Barlow Dec. 14, '78—Huntley, do. Mattingly.

In the Supreme Court of the District of Columbia.

SILAS S. HUNTLEY
v.
BRADLEY BARLOW *et al.* } No. 6558. Equity 19.

On motion of Wm. F. Mattingly, solicitor for the plaintiff, it is, this 14th day of December, A. D. 1878, ordered by the court that the defendant, Bradley Barlow, show cause on the 21st instant why the injunction, as prayed for against him, should not be granted.

By the court: MACARTHUR, *Justice*.

(Indorsed:) 6558. Equity Doc. 19. Huntley *v.* Barlow. Rule to show cause. Min. 4, p. 120. Filed December 14, 1878. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

SILAS S. HUNTLEY, Plaintiff,
vs.
CHARLES C. HUNTLEY *et al.*, Defendants. } In Equity. No. 6458.

The answer of Charles C. Huntley, one of the defendants in the above-entitled case, to the bill of complaint of Silas S. Huntley.

For answer to said bill, or to so much thereof as I am advised it is material and proper for me to answer, I answer as follows:

First and second. I admit the averments in the first and second paragraphs of said bill as to the respective residences of the parties thereto.

8 Third. I deny that the plaintiff was or is the owner with me or with the other defendants to said bill of the stock, property, or effects of what was or is known as the Northwest Stage Company.

Fourth. I deny that the paper-writing referred to in the fourth paragraph of said bill is or was intended to be a contract or agree-

ment conveying or securing to the plaintiff an equal interest or a joint ownership with me of one undivided third part or share in said Northwest Stage Company, its property, &c., or any other interest or share in said company, its property, &c.

I aver, on the contrary, that the one-third interest in said company and its property and effects, referred to in said paper-writing as belonging to S. S. and C. C. Huntley, was and is my sole individual property, and was purchased and paid for wholly with my own money, and has never been transferred or assigned by me in whole or in part to any other person or persons.

Prior to the said 27th day of June, 1874, the date of said paper-writing, I had been for a long time the owner of one undivided sixth part or interest in the said Northwest Stage Company, and of one undivided fourth part or interest in the company called the Oregon and California Stage Company, and one James W. Parker was at that time the owner of two-sixths interest in the said Northwest Stage Company, and one-fourth interest or share in the said Oregon and California Stage Company. For personal reasons I wished to obtain the said interests of the said Parker, and asked the said defendant, Bradley Barlow, to join me in the purchase of them, which he declined to do. I then decided to make the purchase wholly on my own account, and on the 27th day of June, 1874, at the city of Washington, I did purchase of the said James W. Parker one undivided third part or interest in the Northwest Stage Company, its property, &c., and one undivided fourth part or interest in a company called the Oregon and California Stage Company, for the sum of seventy-five thousand dollars, and for the purchase-money made and delivered to the said James W. Parker my eight promissory notes, all bearing date the 27th day of June, 1874, and payable to the order of Bradley Barlow, and endorsed by him; five of said notes being for the sum of ten thousand dollarrs each,
9 and payable on the 1st day of August, 1874; two of said notes being for the sum of ten thousand dollars each, payable on the 1st day of February, 1875; and one of said notes being for the sum of five thousand dollars, and payable on the 1st day of February, 1875.

At the time of said purchase, that is to say, on the 27th day of June, 1874, I received from the said James W. Parker a bill of sale to me for the interests so purchased as aforesaid, the original of which is in the possession of the plaintiff, but a copy thereof is filed herein and made a part hereof, and marked C. C. H., Exhibit No. 1. A few days after said bill of sale was made the said Bradley Barlow purchased of me one of the two-sixths interest so purchased by me of the said James W. Parker, as aforesaid, and paid me therefor the sum of thirty thousand dollars. The notes so given by me as aforesaid were all paid by me with and out of my own money, except the said sum of thirty thousand dollars, which was paid by the said Bradley Barlow.

For some years prior to said 27th day of June, 1874, the plaintiff, who is my cousin, has been in my employ as my clerk and agent in the conduct of my business as a mail contractor on certain mail

routes which I owned and operated in my own name and for my own benefit, wholly separate and distinct from the business of said stage companies. He had received a liberal compensation for his services to me, and all he had asked for or had any right to expect. I was, however, desirous of improving his fortunes, and as the business of said companies promised to be very profitable during the term then about to commence, when the said Bradley Barlow purchased of me the said one-sixth interest as aforesaid, I determined to let the plaintiff have the one-sixth interest in the Northwest Stage Company, and the one-fourth interest in the Oregon and California Stage Company, so purchased as aforesaid. I aver that my purpose and intentions were that the plaintiff should have all the profits derived from the said interests, and that the cost price of the said interests should first be refunded to me. I never at any time agreed to buy for the plaintiff and to give him the said interests or either of them, and I never agreed after they were bought to give them to him, or that he should have them in consideration of his previous services to me or in payment of any money due to him. No writing, memorandum, or agreement of any kind was made as to said interests and my said purposes concerning said purchase, which was made at the city of Washington, and in the absence of the plaintiff. Shortly afterwards I went to the Pacific coast, and at San Francisco I was stricken with paralysis, and was for a long time almost entirely deprived of consciousness. The plaintiff thereupon took charge of all my business, books, papers, moneys, securities, and property of every description. From San Francisco I was removed to New York, where I remained under the care of physicians, until, under their advice, I sailed for Europe in January, 1875. In the meantime, however, I made a visit to Washington. While here in December, 1874, I executed a general power of attorney to the plaintiff, constituting him my agent for the management of all my business. I have no recollection of signing the paper writing referred to in the fourth paragraph of the bill of complaint, a copy of which is filed therewith and marked Exhibit S. S. H., No. 1, and if I signed the same it was because I then believed, as I believe now, that the said paper writing was intended to be the declaration and admission of all the parties thereto that the said Bradley Barlow was authorized to receive all the money that might become payable to said company. I did not in said paper writing intend to admit, nor have I ever admitted, nor do I now admit, but on the contrary deny, that the said plaintiff was or is or was to be an equal owner with me in the said one-third interest in said Northwest Stage Company, its property, profits, assets, &c. except in the event of the repayment to me of the said sum of $45,000 so expended in the purchase of said shares as aforesaid, with interest thereon; and although no agreement to that effect was ever entered into, I have always been and am now willing that the said plaintiff shall have all the profit that has been made or derived in respect of said one-sixth interest in said Northwest Stage Company and said one-fourth interest in said Oregon and California Stage Company since the 1st day of July, 1874, provided there be first repaid to me the said cost price

of said purchase, to wit, the said sum of $45,000, with interest from June 27, 1874.

Fifth. I admit that by the terms of the said paper writing,
11 having date the 22d day of December, 1874, it was declared that the said Bradley Barlow had full power and authority to collect the pay on said mail routes during the term which the said contracts covered, but I deny that he received the same, or any part thereof, for the benefit of the said plaintiff.

Sixth. I am informed and believe that the said Bradley Barlow purchased the interest of the said Adam E. Smith in the Northwest Stage Company, and that the said Smith no longer has any interest therein.

Seventh. I admit that the said Barlow has collected all the mail pay on the routes named in said bill, for the term ending June 30, 1878, and that the collections made by him amount in the aggregate to a large sum of money. I admit that a settlement was made with the said Bradley Barlow on or about the first day of February, 1876, up to and including the 30th day of September, 1875, at which time the expenditures made by the said Barlow exceeded the amounts received by him. I did not then admit the balance of $27,758.05 then claimed by the said Bradley Barlow to be due to him, and I refused to sign the notes that were then prepared. The plaintiff, however, signed his name and mine to said notes, as I was afterwards informed. At a later date, that is to say, on the 11th of August, 1876, on a further accounting with the said Bradley Barlow, I was found indebted to him in the further sum of ten thousand dollars, for which sum I gave to him my promissory note, and to secure the payment of this note and the other notes for $27,758.05, I then executed a deed of trust on my real estate in the city of Washington, which still remains unsatisfied.

Eighth. Whether or not the said plaintiff has requested the said Barlow to give him a statement of account and to pay him, the said plaintiff, something on account, I have no means of knowing, and neither affirm or deny. I aver, however, that the said Bradley Barlow has never refused to render an account to me; and I further aver that I have heretofore notified the said Bradley Barlow not to pay any of the moneys in his hands as the proceeds of the business of the Northwest Stage Company to the saidplaintiff.

I admit that the mail routes operated by the said Northwest Stage Company are those mentioned in said eighth para-
12 graph of said bill, and that the said Barlow received from the Post Office Department the mail pay on said routes.

Ninth. I admit that the said Bradley Barlow is now temporarily in the city of Washington, but is a non-resident of the District of Columbia, his home being in the State of Vermont.

Tenth. That the amount of money collected by said Bradley Barlow from the said mail routes, and as the proceeds of the business of the said Northwest Stage Company, is correctly and properly stated in the schedule or statement attached to the answer of the Bradley Barlow filed in this case, as are also all the receipts and disburse-

ments of the said Bradley Barlow in respect of the business of said company.

10th *a*. I admit that subsequent to June 30, 1878, the said Bradley Barlow sold all the property and effects of the said Northwest Stage Company, and I am informed and believe that a true statement of the sales so made and of the proceeds thereof appear in the statement on account filed with his answer in this case.

10th *b*. I admit that I have been, and still am, and shall be until the settlement of accounts between us, indebted to the said Bradley Barlow, but I deny that the said Bradley Barlow is endeavoring to apply to the payment of said indebtedness any money in which he, the plaintiff, is interested.

10th *c*. I admit that there is a dispute between the plaintiff and myself as to the settlement of our accounts in relation to certain business affairs in which we have been engaged, but which does not in any way relate to the business of the said Northwest Stage Company; and that a suit instituted by me against the plaintiff is now pending in this court, wherein the plaintiff has filed his account admitting an indebtedness to me of about $20,000, exclusive of the amount claimed by him as compensation for his services rendered during my sickness.

Of said sum of $20,000, so due me as aforecaid, about $13,000 has been in the hands of the receivers appointed by the court since September last, and the plaintiff has refused to permit me to withdraw any part thereof to pay pressing debts.

13 I deny that there is any danger of any combination between me and the said Bradley Barlow, by which the plaintiff will be deprived of his just rights; and I deny that the said Bradley Barlow has paid, or is about to pay to me, any sum or sums of money in fraud of the rights of the plaintiff.

Eleventh. And further answering, I say that the said plaintiff has not now, nor has he ever had, any interest in the said Northwest Stage Company which entitles him to an account of the business and assets of said company, or to an injunction, or to the appointment of a receiver; and I further say that there is no occasion for the appointment of a receiver, because the said Bradley Barlow is abundantly able to pay any moneys that may be found due to the plaintiff, or to me, with interest thereon; and that in meantime it is to the interest of the plaintiff, and of the defendants, that the moneys due from him shall remain in his hands, he paying interest thereon.

C. C. HUNTLEY.

NATH'L WILSON,
Solicitor for Defendant.

I do solemnly swear that I have heard read the answer by me subscribed, and know the contents thereof; and that the facts therein stated upon my own personal knowledge are true, and that those stated upon information and belief I believe to be true.

C. C. HUNTLEY.

Sworn to and subscribed before me, this 19th day of April, 1879.
[SEAL.] BARTRAM ZEVELY,
U. S. Comm. District of Columbia.

(Indorsed:) No. 6558. In equity. Silas S. Huntley *v.* Bradley Barlow *et al.* The answer of Charles C. Huntley, one of the defendants, to the bill of complaint, and one Ex. Clerk will please file. N. Wilson. Filed April 19, 1879. R. J. Meigs, clerk.

C. C. H., EXHIBIT No. 1.

Whereas I, James W. Parker, of Atchison, Kansas, have heretofore been and am now associated with Bradley Barlow, of St.
14 Albans, Vermont, and Charles C. Huntley, of Washington, District of Columbia, in a company known as the Northwestern Stage Company, which said company has been and is now engaged in the transportation of the United States mails, and in transporting passengers on the following routes, to wit: From Kelton, Utah, to The Dalles, Oregon; from The Dalles, Oregon, to Boise City, Idaho, and from Boise City, Idaho, to Placerville, Idaho; from Winnemuca, Nevada, to Boise City, Idaho, and from Walla Walla, Washington Territory, to Wallula, Washington Territory; and by the terms of the agreement between us the owner of one undivided third part of all the property of said company, both real and personal, wherever the same is situated;

And whereas I have been and am now associated with the said Bradley Barlow and the said Charles C. Huntley and J. L. Sanderson, of St. Louis, Missouri, in a company known as the Oregon and California Stage Company, which said company has been and is now engaged in the transportation of the United States mails and in transporting passengers on the following routes, to wit, from Oraville, California, to Portland, Oregon, and am, by the terms of the agreement between us, the owner of one undivided fourth part of all the property of said company, both real and personal, wherever the same is situated;

And whereas I now propose to withdraw from both of said companies, and do hereby withdraw therefrom, and to sell and dispose of all my right and interest therein to the said Charles C. Huntley:

Know all men by these presents that I, the said James W. Parker, of Atchison, Kansas, for and in consideration of the sum of seventy-five thousand dollars, for which amount the said Charles C. Huntley has made and delivered his eight certain promissory notes, all bearing even date herewith and payable at the National Park Bank, New York, to the order of Bradley Barlow, and indorsed by him, five of said notes being for the sum of ten thousand dollars each, each payable on or before the first day of August, 1874, two of said notes being for ten thousand dollars each, payable on the first day of February, 1875; one of said notes being for five thousand dollars, payable on the first day of February, 1875, the receipt of which said promissory notes I hereby acknowledge, do grant, sell,
15 set over, and transfer to the said Charles C. Huntley all my right and interest, of whatever kind, in and to all the prop-

erty, both real and personal, now held, owned, and possessed by the said company, and each and both of them, and in all the coaches, wagons, harness, horses, and running and rolling stock of whatever kind; implements, tools, stations, and shops on the routes or elsewhere; and in all moneys due and to become due to either or both of said companies or persons for the transportation of the mail or for any other account.

To have and to hold, all and singular, the said goods, stock, property, rights, and interest unto the said Charles C. Huntley, his executors, administrators, and assigns forever, so that neither I, the said James W. Parker, or any other for me or in my name, any right or interest in the said goods, stock, property, rights, and interest of whatever kind, shall or will ever claim or demand, at any time or times hereafter, forever; and I, the said James W. Parker, my executors and administrators, shall and will forever warrant and forever defend by these presents, all and singular, the said goods and stock, rights, and interest unto the said Charles C. Huntley, his executors and assigns, against the claim and demand of all persons claiming the same by, through, or under me, my heirs, executors, administrators, and assigns.

And I, the said James W. Parker, do further covenant and agree that at any time hereafter I will, at the cost of the said Charles C. Huntley, execute and deliver to the said Charles C. Huntley any quit-claim deed or deeds for and to any real estate that may have been heretofore conveyed to either of said companies or to the partners constituting the same.

Witness my hand and seal this 27th day of June, A. D. 1874.

JAMES W. PARKER. [SEAL.]

Signed, sealed, and delivered, and delivery of possession of the goods, stock, interest, and right given by the said James W. Parker, delivering to the said Charles C. Huntley one dollar in the name of the whole of said goods, property, and premises, in the presence of Henry R. Elliott.

16 DISTRICT OF COLUMBIA:

I, Henry R. Elliott, a United States commissioner in and for the District aforesaid, do hereby certify that James W. Parker, party to a certain bill of sale bearing date on the 27th day of June, A. D. 1874, and hereto annexed, personally appeared before me, in the District aforesaid, the said James W. Parker being personally known to me to be the person who executed the said bill of sale, and acknowledged the same to be his act and deed.

Given under my hand and seal this 27th day of June, A. D. 1874.

[SEAL.] HENRY R. ELLIOTT,
U. S. Commissioner for the District of Columbia.

(Indorsed:) S. S. Huntley *v.* Barlow *et al.* No. 6558. C. C. H., Ex. No. 1. Filed April 19, 1879. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

SILAS S. HUNTLEY, Plaintiff,
vs.
BRADLEY BARLOW *et al.*, Defendants. } In Equity. No. 6558.

The answer of Bradley Barlow, one of the defendants in the above-entitled case, to the bill of complaint of Silas S. Huntley.

For answer to said bill of complaint, or to so much thereof as I am advised it is material and proper for me to answer, I answer as follows:

First and Second. I admit the averments in the first and second paragraphs in said bill, as to the respective residences of the parties thereto.

Third. I have no personal knowledge, except as is hereinafter stated, as to the plaintiff's ownership of an interest in the Northwest Stage Company, its stock, property, and effects, and therefore neither admit nor deny the averments as to such ownership contained in the third paragraph of said bill, but leave the plaintiff to make such proof thereof as he may be advised and may be able to adduce.

Fourth. I deny that the paper writing referred to in the
17 fourth paragraph of said bill is or was intended to be a contract or agreement conveying or securing to the plaintiff an interest and partnership in the Northwest Stage Company, its property, &c. The original draft of said paper writing was prepared by me under the following circumstances, and for the purpose now to be stated.

The contracts with the Post Office Department for the performance of the mail service on the routes owned by the company were for a term of years beginning on the 1st of July, 1874, and ending June 30, 1878. At the time said paper-writing was signed, that is to say, on the 22d day of December, 1874, nearly six months after said contract went into effect, the said company was largely indebted to me for advances I had made in order to establish and maintain the mail service on said routes. It was certain that further advances would be required. The said Adam E. Smith, one of the defendants, was then a person of intemperate habits and peculiar disposition. The said Charles C. Huntley, one of the defendants, was suffering from a stroke of paralysis, which had greatly impaired his physical and mental strength, and was about to go abroad, to be absent an indefinite time. In view of these facts I was desirous of obtaining, for my own protection, from all persons who then had or claimed to have any interest in said company, a formal declaration of my authority to collect and receive all the money that might become due and payable to said company during the whole of the term of said contracts, and I prepared the original draft of said paper-writing in order to obtain the written recognition of the authority which the said Charles C. Huntley and the said Adam E. Smith had verbally given to me before I made such advances.

Of the original draft of said paper three or four copies were made by my direction, and they were all executed by the persons whose signatures are attached thereto on the day the paper bears date.

The plaintiff had previously said to me something concerning his alleged interest with the said Charles C. Huntley in his, the said Huntley's, share in said company; but the said plaintiff did not at that time, or at any time prior to the expiration of said contract, state to me, or in my hearing, the precise nature of his claim. At the time the said paper was signed, nothing was said by any
18 of the parties thereto as to their respective interests, and the said Charles C. Huntley was informed that said paper was a recognition of my authority to collect the moneys that might become due said company, and such, in fact, it was intended to be, and nothing other than that. At that time the said Charles C. Huntley was not in a fit condition, mentally or physically, to make a new contract or to enter into any new agreement or arrangements as to his business.

Prior to the 1st day of July, 1874, the said Charles C. Huntley, the said Adam E. Smith, and one James W. Parker, and I, constituted said firm and company, known as the Northwest Stage Company, and during the greater part of the term of four years, commencing on the first day of July, 1870, had carried on the business of said company, which consisted of the transportation of the mails and passengers on certain mail routes owned or operated by said company, and had derived considerable profit therefrom. In the said company, its property, &c., the said Charles C. Huntley owned an undivided one-sixth interest, the said Adam E. Smith an undivided one-sixth interest, and the said James W. Parker two undivided sixths interest, and I two undivided sixths interest.

When said last-mentioned term was about to expire the said Charles C. Huntley expressed a determination to buy out the interest of the said James W. Parker in the said company and in the company known as the Oregon and California Stage Company, in which said last mentioned company the said Charles C. Huntley and the said James W. Parker had each an undivided one-fourth interest, and requested me to join him in the purchase. This I declined to do. He then said that he would make the purchase on his own account, as he was resolved that the said Parker should go out of the company, and that afterwards I might take as much or as little of the interest so purchased as I wished.

On the 27th day of June, 1874, the said Charles C. Huntley did purchase of the said James W. Parker his (the said Parker's) two-sixths interest in said Northwest Stage Company and his one-fourth interest in the said Oregon and California Stage Company, and agreed to pay therefor the sum of $75,000, and to secure the payment thereof made and delivered on said day to the said
19 James W. Parker, his (the said Charles C. Huntley's) promissory notes for the said sum of $75,000, payable to my order, and which were indorsed by me and delivered to the said James W. Parker, who executed a bill of sale for said interests to the said Charles C. Huntley. A few days later I determined to take and did take of the said Charles C. Huntley one of the two-sixths interest so purchased by him as aforesaid in said Northwest Stage Company, and paid him therefor the sum of $30,000. The remainder of said.

sum of $75,000, the purchase-money for said interests, was paid by the said Charles C. Huntley with his own money. Up to the time of my said purchase of one-sixth interest of the said Charles C. Huntley, the said plaintiff, had nothing to do in any way with the business of said companies, or either of them, and I had never heard that he had or claimed any interest in them. At the time I made the said last-mentioned purchase the said Charles C. Huntley informed me that he was going to let the plaintiff have the other one-sixth interest which he had just purchased of the said Parker as aforesaid, but he did not then, or at any other time, inform me upon what consideration or terms it was to belong to the plaintiff.

Fifth. I admit that by the terms of said writing it was declared that I had full power and authority to collect the pay on said mail routes during the entire term of the said contracts for the benefit of all the parties named therein, and in the proportions therein stated, but I aver that the proportion due or claimed to be due to the plaintiff was not therein stated, and was not intended to be therein stated.

Sixth. I admit that I purchased the interest of the said Adam E. Smith in said contract, and that the said Smith has no longer any interest in or under the same. By the said purchase, and by the purchase made of the said Charles C. Huntley added to the interest previously owned by me, I became and am the owner of — thirds of the shares or interests of and in the said Northwest Stage Company, its property, &c.

Seventh. I admit that I have collected all the mail pay on said routes for the term of four years ending June 30, 1878, amounting in the aggregate to a large sum of money. I admit that on the 1st of February, 1876, a statement and settlement was made as to the business of said Northwest Stage Company up to and including the 30th day of September, 1875, at which time the said Charles C. Huntley, on the interests which he owned separately or in connection with the said plaintiff, was indebted to me in the sum of $27,758.05, for which amount the plaintiff executed in his own and in the name of the said Charles C. Huntley promissory notes bearing date February 1, 1876, and which notes I still hold. Subsequently, that is to say, on the 11th day of August, 1876, for a further indebtedness of $10,000 I took the individual note of the said Charles C. Huntley, and on the same day, to secure the payment of said notes for $27,758.05 and $10,000, I took a deed of trust from the said Charles C. Huntley on his (the said Charles C. Huntley's) own real estate in the city of Washington. I admit that since said settlement was made the business of said company has been profitably conducted, and that up to the time of filing said bill I had made no statement of account and no settlement.

Eighth. I admit that the plaintiff has frequently requested me to give him a statement of account and to pay him something on account of his said alleged interest. I deny that I have ever refused to make any statement of account, but I admit that I have refused to pay to the plaintiff any money on account of his, the plaintiff's, alleged interest in said company, because I have been notified by said Charles C. Huntley not to pay any money to the plaintiff on

safd account, and that he, the said plaintiff, has no interest in said company, its property or assets.

I admit that the mail routes operated by the satd Northwest Stage Company are correctly described tn the eighth paragraph of said bill.

Ninth. I admit that I am now temporarily in the city of Washington, and that my domicil is in the State of Vermont.

Tenth. The amount of money which I have collected and expended in the conduct of the business of said company is correctly stated in the account herewith filed and made a part of this answer, and marked B. B., Exhibit No. 1, which said account has been submitted to the plaintiff and to the said Charles C. Huntley, and has been approved by them. From the original account prepared by me I have omitted every item of credit to me to which the plaintiff
21 or the said Charles C. Huntley objected, and the correctness of all the items of debit and credit appearing in the account now filed has been admitted by the plaintiff as well as by the said Charles C. Huntley. Said account could not be prepared or presented at an earlier day, because of the unsettled condition of t business of *said* company.

10th *a*. I admit that subsequent to June 30, 1878, I sold all the property of the said company, as is shown by the account of said sales and the proceeds thereof set forth in the statement filed herewith and made a part hereof, and marked B. B., Exhibit No. 2.

10th *b*. I admit that the said Charles C. Huntley is indebted to me. The indebtedness represented by the notes so made by the said plaintiff as aforesaid for the sum of $27,758.05, and the other indebtedness of the said Charles C. Huntley is shown by the statement filed herewith and made a part of this answer, and marked B. B., Exhibit No. 3. I deny that I am endeavoring to apply any of the moneys in which the said plaintiff is interested to the payment of the individual indebtedness of the said Charles C. Huntley to me.

10th *c*. I admit that there is a dispute between the plaintiff and the said Charles C. Huntley concerning the settlement of their accounts which relate to their private and separate business, and that a suit instituted by the said Charles C. Huntley against the plaintiff for an account is pending in this court.

I deny that I have done or intend to do any act or make any payments or application of any payments with intent to defraud the plaintiff of any of his just rights, and I aver that I am ready and willing to pay over the moneys now in my hands as aforesaid to the person or persons justly entitled to receive the same and receipt therefor, but having been notified by the plaintiff and by the said Charles C. Huntley not to pay any part of said moneys to the other, I cannot safely make payment thereof except in compliance with the order and decree of this honorable court.

Eleventh. Further answering, I say that during the last four years I have loaned to the plaintiff from time to time my promissory notes for large sums, which were used by him to obtain money for the prosecution of the business of the plaintiff and the said Charles

22 C. Huntley, in which I had no interest or concern, and that I have in my possession the notes of the plaintiff for a considerable amount, which I am ready to surrender on the return to me of the accommodation notes and certain checks which I have loaned to him as aforesaid.

I also aver that I have an unsettled account with the said Charles C. Huntley, growing out of transactions that have occurred since the said 30th day of June, 1878, but which does not relate to the business of the said Northwest Stage Company.

And having fully answered, &c.

BRADLEY BARLOW.

NATHANIEL WILSON,
Solicitor for Defendant.

I do solemnly swear that I have heard read the answer by me subscribed, and know the contents thereof, and that the facts therein stated upon my own knowledge are true, and that those stated upon information and belief I believe to be true.

Subscribed and sworn to before me, this 18th day of April, 1879.
[SEAL.] BARTRAM ZEVELY,
U. S. Com. Dist. of Col.

(Indorsed:) No. 6558. In equity. Silas S. Huntley *v.* Bradley Barlow *et al.* The answer of Bradley Barlow, one of the defendants, to the bill of complaint, and 3 exs. Clerk will please file. N. Wilson. Filed April 19, 1879. R. J. Meigs, clerk.

B. B., EXHIBIT No. 1.

Hon. Bradley Barlow in acc't with N. W. Stage Co.

1875.			1875.		
4th qr.	To mail pay	$57,866 58	4th qr.	By collections	$49,493 22
				Deductions and fines	500 78
				Cash to Morris	50 61
				Qr. expenses	500 00
				Van Drillon	305 49
					$50,850 10
				Bal.	7,016 48
		$57,866 58			$57,866 58

23 *First Quarter*, 1876.

Mar. 31.	To balance	$7,016 48	By collections	$44,331 60
	Mail pay	59,961 50	Deductions	135 57
			Cash to Morris	179 19
			Qr. expenses	500 00
			Van Drillon	456 17
				$45,602 62
			Bal.	19,375 36
		$64,977 98		$64,977 98

Second Quarter, 1876.

June 30.	To balance	$19,375 36	By collections		$41,496 71
	Mail pay	58,500 60	Deductions		27 28
	Cash from Morris	1,064 36	Qr. expenses		500 00
					$42,023 99
			Bal.		36,916 33
		$78,940 32			$78,940 32

Third Quarter, 1876.

Sept. 30.	To balance	$36,916 33	By collections		$41,624 24
	Mail pay	57,486 50	Cash to Morris		32,205 63
			Qr. expenses		500 00
			Van Drillon		489 10
			"		672 08
			N. Wilson		300 00
			Expenses		660 00
			Dr.		100 00
			Witmore		2,070 00
					$78,621 05
			Bal.		15,781 78
		$94,402 83			$94,402 83

Fourth Quarter, 1876.

Dec. 31.	To balance	$15,781 78	By collections		$41,711 56
	Mail pay	57,486 50	Deductions		3 72
	Cash from Morris	13,942 03	Qr. expenses		500 00
			Van Drillon		497 86
					$42,713 14
			Bal.		44,497 17
		$87,210 31			$87,210 31

First Quarter, 1877.

Mar. 31.	To balance	$44,497 17	By collections		$42,532 77
	Mail pay	58,740 36	Qr expenses		500 00
	Cash from Morris	11,842 30	Com. on $45,129		1,700 00
			Van Drillon		1,006 90
					$45,739 67
			Bal.		69,340 16
		$115,079 83			$115,079 83

Second Quarter, 1877.

June 30.	To balance	$69,340 16	By collections		$41,017 89
	Mail pay	60,347 80	Qr. expenses		500 00
	Cash from Morris	19,533 87	Van Drillon		1,456 56
			Island Mine Route		2,445 00
					$45,419 45
			Bal.		103,802 38
		$149,221 83			$149,221 83

24 *Third Quarter*, 1877.

Sept. 30.	To balance	$103,802 38	By collections		$42,465 50
	Mail pay	60.080 80	Cash to Morris		20,000 00
			Qr. expenses		500 00
			Expenses		500 00
					$63,465 50
			Bal.		100,417 68
		$163,883 18			$163,883 18

Fourth Quarter, 1877.

Dec. 31.	To balance	$100,417 68	By collections		$40,000 00
	Mail pay	60,080 80	Qr. expenses		500 00
	Cash from Morris	4,897 50			$40,500 00
			Bal.		124,895 98
		$165,395 98			$165,395 98

First Quarter, 1878.

Mar. 31.	To balance	$124,895 98	By collections		$45,771 30
	Mail pay	60,080 80	Deductions		140 06
	Cash from Morris	235 53	Qr. expenses		500 06
	Dr.	473 25			$46,420 42
			Balance		130,265 14
		$185,685 56			$185,685 56

Second Quarter, 1878.

June 30.	To balance	$139,265 14	By collections		$40,236 44
	Mail pay	60,080 80	Deductions		92 37
			Qr. expenses		500 00
					$40,828 81
			Balance		158,517 13
		$199,345 94			$199,345 94

1878.		
	To balance	$158,517 13
Oct.	Cash supplies	7,000 00
Nov.	Cash Morris, Adm'r	7,803 26
"	Cash stock sold	2,500 00
"	Cash 2 notes collected	6,420 00
1879.		
Feb.	8 notes S. H. & Co.	60,000 00
	Note of Morris	10,000 00
	Note of S. H. & Co.	3,210 00

(Indorsed:) S. S. Huntley *v.* Bradley Burlow *et al.*. Ex's to the answer of Bradley Barlow. Filed April 19, 1870. R. J. Meigs, clerk.

25 B. B., EXHIBIT 2.

Bradley Barlow in account with Northwest Stage Company.

1875.		
	To cash received for sale of supplies	$7,000 00
Nov. 15.	Stock sold Morris	2,500 00
" "	Cash collected on note on account of sale of stock	3,210 00
	Cash received from administrator to close account of Morris as agent	7,803 26
1879.		
Feb. 15.	Cash for note on account of sale of stock	3,210 00
April 15.	Cash for note on account of sale of stock	3,210 00
		$26,933 26

Eight notes of Salisbury Hailey & Co. given on account of purchase of stock July 1, 1878, for $7,500 each, interest at six per cent.	$60,000 00
Note W. B. Morris, late agent, at 10 per cent. interest	10,000 00

Notes due as follows:

August 1, 1879, and interest six per cent.	$7,500 00
" " " " " " "	7,500 00
November 1, " " " " "	7,500 00
" " " " " " "	7,500 00
February 1, 1880 " " " "	7,500 00
May 1, " " " " "	7,500 00
August 1, " " " " "	7,500 00
November 1, " " " " "	7,500 00
	$60,000 00

(Indorsed:) In equity. No. 6558. S. S. Huntley *v.* B. Barlow. Account sales Co. property. Exs. to the answer of Bradley Barlow. Filed April 19, 1879. R. J. Meigs, clerk.

B. B. EXHIBIT 3.

Indebtedness to Bradley Barlow.

The notes of S. S. and C. C. Huntley, dated February 1, 1876, with interest at 10 per cent. per annum, one for	$10,000 00
One for	10,000 00
One for	7,758 05
	$27,758 05

Note of C. C. Huntley, dated August 11, 1876, and interest at 10 per cent.		$10,000 00
Note of C. C. Huntley, dated September 2, 1875		1,702 66
26 Draft of C. C. Huntley, dated July 6, 1876, interest at 6 per cent.	$250 00	
Cash paid C. C. Huntley, as per receipt dated August 6, 1878, interest at 6 per cent.	1,000 00	
Note of C. C. Huntley, dated August 10, 1878, interest at 6 per cent.	500 00	
Draft of C. C. Huntley, dated September 5, 1878, interest at 6 per cent.	800 00	
Draft of C. C. Huntley, dated October 25, 1878, interest at 6 per cent.	800 00	
Draft of C. C. Huntley dated October 23, 1878	1,500 00	
		$16,552 66

(Indorsed:) In equity. No. 6558. S. S. Huntley *v.* Bradley Barlow. Indebtedness. Exhibit to the answer of Bradley Barlow. Filed April 19, 1879. R. J. Meigs, clerk.

Replication.

In the Supreme Court of the District of Columbia.

SILAS S. HUNTLEY
v.
C. C. HUNTLEY *et al.* } No. 6558. Equity.

The plaintiff hereby joins issue with the defendants, Charles C. Huntley and Bradley Barlow, upon their several answers.

WM. F. MATTINGLY,
Sol. for Pl'ff

It is hereby stipulated that the above replication may be filed now as of the time when the same should have been filed.

NATH'L WILSON,
Sol. for Def't.

In the Supreme Court of the District of Columbia.

SILAS S. HUNTLEY
v.
C. C. HUNTLEY *et al.* } In Equity. No. 6558.

The clerk will set this case for hearing by consent.

* * * * * *

WM. F. MATTINGLY,
Sol. for Plaintiff.
NATH'L WILSON,
Sol. for Defendant.

27 *Plaintiff's Testimony.*

In the Supreme Court of the District of Columbia.

SILAS S. HUNTLEY
vs.
BRADLEY BARLOW, CHAS. C. HUNTLEY, and ADAM E. SMITH. } No. 6558. Eq. Doc. 19.

Be it remembered that at an examination of witnesses on behalf of the plaintiff in the above-entitled cause, begun on Friday, February 6, 1880, and continued from time by consent or adjournment, when the within depositions were taken, I, A. Johns, an examiner in chancery, did cause to be personally present at the office of Wm. F. Mattingly, Esq., in the city of Washington, in said District, the within-named witnesses to testify to the above-entitled cause on behalf of the plaintiff.

A. JOHNS, *Examiner.*

FRIDAY, *February* 6, 1880.

Met by agreement. Present: William F. Mattingly, for the plaintiff; Nathaniel Wilson, for the defendants.

SILAS S. HUNTLEY, having been duly sworn, testified as follows:

By Mr. MATTINGLY:

1 Q. You are the plaintiff in this case, I believe?

A. Yes, sir.

28 2 Q. Look at the paper now shown you, marked "Exhibit S. S. H., No. 1," and state whether that was signed by the defendant, C. C. Huntley?

A. Yes, sir; it was.

3 Q. It was also signed, I presume, by the other parties whose signatures it professes to bear?

A. Yes, sir.

4 Q. Do you remember where that paper was executed?

A. It was executed in our rooms at the Arlington Hotel, in Washington, in December, 1874?

(The exhibit is offered in evidence by Mr. Mattingly. Mr. Wilson objects to its competency.)

5 Q. Please state what interest, if any, you had in what is known in this proceeding as the Northwestern Stage Co. and the California and Oregon Stage Co. from and after July 1, 1874?

A. I had a one-sixth interest in the Northwestern Stage Co. from 1874 to 1878, and a one-fourth interest in the California and Oregon Stage Co. from 1874 until I sold out.

(Mr. Wilson objects to the answer.)

6 Q. The Nortwestern Stage Co. was engaged in the transportation of the United States mails over certain routes during that period, I understand?

A. Yes, sir; through Idaho, Oregon, Utah, and Nevada.

7 Q. And the contracts for carrying those mails expired June 30, 1878?

A. Yes, sir.

8 Q. Please state fully and in detail how and in what manner and when you acquired this interest which you claim to have had, and all the circumstances connected with it.

A. The company, before I was interested in it, was composed of Barlow, C. C. Huntley, Smith, and Parker, and all the parties interested seemed to dislike Mr. Parker very much, and were desirous of getting him out of the firm, and a number of times it was mentioned by C. C. Huntley that he would like me to have that interest. Then in the fall of 1873 and in 1874 C. C. Huntley and myself put in numerous bids on these routes, and on all other routes, to be equally interested in those bids, which were to cover a period of four years from July 1, 1874, to June 30, 1878. In order to secure these Northwestern routes, we thought it necessary
29 to have a reliable man, whom I secured; put in his bids very low—so low that he secured quite all of them that we expected on the Northwestern routes—myself, C. C. Huntley, and others having put in bids at higher rates. Then, after it was learned that De Lacey had secured these routes, C. C. Huntley tried to buy Parker's interest for me when I was here in June, 1874; but Mr. Parker was a very stubborn man to deal with, and he disliked to dispose of his interest, and would not while I was here. But it was necessary to start all these roads on the 1st of July, so I left with De Lacey and went out there to Boise City, and introduced Mr. De Lacey to our superintendent and turned over all the stock to Mr. De Lacey, and saw that all the routes were started on the 1st day of July under Col. De Lacey's contracts. While there I received a telegram from C. C. Huntley stating that he had purchased Mr. Parker's interest. I at once understood the dispatch.

By Mr. WILSON:

9 Q. Have you got that dispatch?

A. I have not.

(Mr. Wilson objects to the witness stating his understanding of the dispatch.)

The witness, continuing: I understand the dispatch to be that the interest was for me, as we had already talked the matter over before I left Washington. Having started all the routes, I then started East and met C. C. Huntley on his way West, at or near Salt Lake. He was not looking very well, and instead of returning East, as I had expected, I told him that I would go on to San Francisco with him, and take the trip that he had marked out for himself up over the California and Oregon roads and the Northwestern roads, where I had already been. While in Salt Lake C. C. Huntley agreed that I should have this equal unincumbered interest with him in the Northwestern Stage Co. and in the California and Oregon Stage Co. from July 1, 1874. I left him in San Francisco and went up over the California and Oregon road to Walla Walla. From there I

started on my way East, expecting to put our affairs on paper when we returned East. On the road I received a dispatch from San Francisco stating that C. C. Huntley was very ill. Thereupon I retraced my steps, and from San Francisco telegraphed C. C. Huntley's physicians in New York, and they advised me to bring him East, which I did. He was then too ill to attend to business until later in the fall. Then Mr. Barlow and I thought it would be better for his health, and for all our interests concerned, that C. C. Huntley should go to Europe, which he did.

(Mr. Wilson objects to the answer, as incompetent, irrelevant, and immaterial.)

By Mr. MATTINGLY:

10 Q. What was the consideration for which C. C. Huntley let you have this interest in the Northwestern and California and Oregon Stage Cos.?

A. I had been connected with him for about eight years as a partner in some routes, and as general superintendent, general manager, and so on, and our whole business for that entire length of time had never been settled; during that time I had never drawn any money except for my board and clothes; and it was on account of this indebtedness of C. C. Huntley to me in this unsettled business—there having been no regular books kept by which to settle our accounts for that whole time—that he agreed to give me this interest unincumbered.

11 Q. What were the relations existing between you and C. C. Huntley during the eight years prior to July 1, 1874, and under what agreement or understanding, if any, were you acting with him?

A. He wanted me to go to Montana and be interested in mail contracts and staging. He thought I could make a great deal more money than I could East. I told him I was satisfied to go, and I went.

12 Q. Was there any understanding by which he was to pay you a salary?

A. No, sir; there was never any agreement as to salary, or any definite sum stated.

13 Q. How was it spoken of by him?

A. He generally used to speak of the routes as "our routes."

14 Q. During those years, state approximately about what profits he realized from the mail contracts which you were working for him and with him.

A. There was never any regular set of books kept in regard to the profits on these routes, or in connection with our business whatever. But I did have charge, myself, of subletting what routes we had from 1870 to 1874. I kept a simple Dr. & Cr. account for each of these routes that were sublet during that length of time, and I now have the book. Those accounts show a profit of $400,000 or $500,000. This did not include the routes that were run by the Northwestern Stage Co., or the routes that were stocked, but only those that were sublet. I happen to have that book for

that time; but for the four years preceding that I cannot approximate what the profits were. Probably during the whole eight years the profits would be $800,000 or $900,000.

(Mr. Wilson objects to the answer, as immaterial and incompetent.)

15 Q. State whether, during those eight years prior to July, 1874, there were any mail contracts in which you and he were jointly interested.

A. Yes, sir; there were some.

16 Q. State, as near as you can, about what profits, if any, were realized from those mail contracts.

A. One was what is known as the Sweetwater route, that we had stocked and run ourselves. The mail pay on that was from $10,000 to $12,000 per year, and the passenger traffic just about paid the expenses of the road. In addition to this, we had a few little routes in Kansas and Nebraska, in which I was equally interested with him. The profits upon those would be a few thousand dollars for the four years.

(Answer objected to by Mr. Wilson, as immaterial, and not the best evidence of the facts sought to proved.)

17 Q. What became of the profits realized from those routes, which you speak of, in which you and he were jointly interested?

A. C. C. Huntley had the benefit of all the moneys for all the time up to June 30th, 1874.

18 Q. Did you at any time draw out your share of those profits?

A. I never at any time drew out my share.

19 Q. State what other moneys went to the benefit of C. C. Huntley, during those eight years, which did not arise out of the receipts for mail contracts.

A. About the year 1870 we sold the route we had stocked from Helena to Cedar Creek for about $30,000. In the inventory
32 of the road were included station, stable, furniture, &c., belonging to my brother, Charles Huntley, who had been collector for that district there, and who died about the time we sold out. This property was inventoried into the general sale, and amounted to probably $1,500. Before we sold Cedar Creek was a mining camp, and I was in the habit of buying gold dust there on my own account, and shipping it by our own express to Helena and selling it. The profits on those sales for a few months would probably have amounted to $1,500 to $2,000. Then, at the time that Mr. Claggett was elected to Congress there, we were very anxious to elect him, and I being, as I supposed, on the inside, bet, by putting up checks in the bank, and won about $2,000 on the election. All these amounts were turned in to the benefit of the concern, or used in the transaction of the business there.

(Mr. Wilson objects to the answer, as incompetent and immaterial.)

20 Q. During those eight years where, generally, were those mail routes run?

A. Mostly in Montana, but they covered Idaho, and down as far as Walla Walla. The main line was from Missoula to Walla Walla. The staging that I attended to particularly was in Montana.

21 Q. About what portion of that eight years did C. C. Huntley spend out there?

A. The first four years he was nearly the entire time, I think, in Washington, attending to lawsuits. He came out there about two or three weeks each summer. The last part of the eight years he was general manager of the Northwestern Stage Co., and went out there every quarter.

22 Q. During that eight years was there any understanding between you as to what your interest in the business was to be?

A. There was never any definite understanding or written agreement.

23 Q. You simply went out there with the understanding that you were to be interested?

(Question objected to by Mr. Wilson, as leading.)

A. Yes, sir.

24 Q. Under what understanding as to this business did you go out there?

A. I went out there with the understanding that I was to
33 be interested in the contracts that we might get in Washington, and the stage business that we might be engaged in out there.

25 Q. In 1874, when you met C. C. Huntley in San Francisco, state, as nearly as you can, what took place between you at that time relative to the consideration of your interest in the contracts of the Northwestern and the California and Oregon Stage Cos., for the contract term from July 1, 1874, to June 30, 1878.

A. In consideration of my previous services, and contracts that I had been interested in, as it was difficult to settle what the indebtedness might be, he agreed to give me an equal unincumbered interest with himself in the California and Oregon and in the Northwestern Stage Co., with the request, as he was not feeling very well, that I should be general manager of the concern for one year. Then, as he was still unable to be general manager, I continued during the four years to be general manager of the Northwestern Stage Co.

26 Q. Were you equally interested with him in other mail contracts from July 1, 1874? Did you engage in any other business with him?

A. All the bids we put in, and all the contracts we had secured or should secure for that time, we were to be equally interested in, and although I was manager of the Northwestern Stage Co., all the mail pay for the company was drawn by Mr. Barlow, while all the mail pay drawn for all the other routes that we were equally interested in I drew myself, and paid out and accounted for.

27 Q. And the settlement of the partnership accounts between you in the routes other than the Northwestern Stage Co. is involved in the suit pending in the supreme court of the District of Columbia, instituted by him against you, No.——, Equity?

A. Yes, sir.

28 Q. After you acquired this one-sixth interest in the Northwestern Stage Co., and one-fourth in the California and Oregon, did C. C. Huntley have then the same interest that you had?

A. Yes, sir; we had equal interests in both companies.

29 Q. What relation is C. C. Huntley to you?

A. A cousin.

34 30 Q. When were these bids for mail routes put in by the Northwestern Stage Co. on the contract term beginning July 1st, 1874?

A. In January or February, 1874.

31 Q. For what period were those contracts to run?

A. The contracts were to run four years.

32 Q. Was there ever any understanding or agreement between C. C. Huntley and yourself that you were to pay him $45,000, or any other sum of money, for this one-sixth interest in the Northwestern Stage Co.?

A. No, sir; there was never such an agreement.

33 Q. Was there ever any understanding or agreement between you that you were to pay him anything out of your one-sixth interest in the profits that you might realize from it?

A. There was never any agreement that I should pay him anything, except to cancel his indebtedness for the eight years' unsettled business.

34 Q. Were any contracts obtained under those bids that were put in by the Northwestern Stage Co. in January or February, 1874?

A. De Lacey secured every contract, to start with; but they were put in with my management.

35 Q. Who procured De Lacey to put in those bids?

A. He was an old friend of mine, and it was necessary to have a reliable man. I went over to New York, and explained the situation to him, and he agreed to put in the bids, and he did so.

36 Q. Did either C. C. Huntley or Bradley Barlow have anything to do with De Lacey putting in those bids?

A. Barlow had nothing whatever to do with it, but C. C. Huntley had, after I introduced De Lacey to C. C. Huntley.

37 Q. During the four years from and after July 1st, 1874, who had the general management and superintendence of the Northwestern Stage Co.?

A. I was the general manager; I was known out there as a general manager from the commencement to the end of the contract term.

38 Q. Did you spend those four years out there engaged in that business?

A. No, sir; I did not. I spent part of the time there and part here. I went over the route, as C. C. Huntley had been in the habit of doing for the four years previous.

35 39 Q. What became of the California and Oregon Stage Co.?

A. At the expiration of less than a year and a half, finding that it was running behind continually, I sold my one-fourth interest and C. C. Huntley's one-fourth interest to Mr. Sanderson, who

already held a one-fourth interest; at the same time Mr. Barlow held the remaining one-fourth interest.

40 Q. Look at the paper now shown you, marked "Exhibit S. S. H., No. 2," and state whether that is signed by Mr. Sanderson.

A. It is signed by Mr. Sanderson, who purchased my interest.

41 Q. When was that paper executed?

A. In April, 1876.

42 Q. In whose handwriting is it?

A. In Nathaniel Wilson's handwriting.

43 Q. In what capacity was Mr. Nathaniel Wilson acting at that time?

A. He was acting as attorney for myself and C. C. Huntley.

(The paper is offered in evidence by Mr. Mattingly, and is objected to by Mr. Wilson as immaterial.)

44 Q. For what amount did you sell the interest of C. C. Huntley and yourself in the California and Oregon route?

A. For $20,000 altogether.

45 Q. Who received the mail pay for the Northwestern Stage Co.?

A. Mr. Barlow collected all the mail pay for the entire Northwestern Stage Co., and also for the California and Oregon Co.

46 Q. When did you have a settlement with Mr. Barlow?

A. In February, 1876.

47 Q. That was up to what time?

A. That was from the commencement of the contract, July 1st, 1874, to September 30th, 1875.

48 Q. During that period, how did that turn out relative to profit and loss?

A. It had been running at quite a heavy loss.

49 Q. What was the share of loss of C. C. Huntley and yourself, and how did you settle with Mr. Barlow?

36 A. Our share of the loss for that period of five months was $27,758.05. We settled with Mr. Barlow by giving him three notes for the amount, and from him I received his receipt as a settlement in full of all loss and damages sustained and incurred in operating the line up to September 30th, 1875.

50 Q. That is his receipt which you now hold?

A. This is Mr. Barlow's receipt for the settlement of the business for that length of time.

(Mr. Mattingly offers the receipt in evidence, and it is marked "Exhibit S. S. H., No. 3." Mr. Wilson objects.)

51 Q. This receipt is on its face for the joint notes of C. C. Huntley and S. S. Huntley. By whom were those notes signed?

A. They were signed by me for C. C. and S. S. Huntley.

52 Q. Do you remember where you signed them?

A. Yes, sir; I signed them in Mr. Nathaniel Wilson's office.

53 Q. Who, if any one, suggested that you should sign them in that way?

A. Mr. Barlow and Mr. Wilson suggested that I should sign them in that way.

54 Q. Did they assign any reason why you should do it?

A. Because C. C. Huntley objected to some of the items in the account that Mr. Barlow had rendered; he thought that they were extravagant, and he refused to sign them; so Mr. Wilson and Mr. Barlow said it would be just as well if I signed them myself as though he signed them.

55 Q. Was he present?

A. Yes, sir; C. C. Huntley was present.

56 Q. Did he make any objection to your signing the notes in that way?

A. No, sir; he did not object to my signing the notes in that manner, but he had objected to some items in Barlow's account that made this final settlement.

57 Q. Did you make any payment to Mr. Barlow on those notes?

A. Yes, sir; one payment; as soon as I sold the California and Oregon road for $20,000, the proceeds were given to Barlow to apply on our notes that he held for $27,578.05.

58 Q. The notes mentioned in that receipt?

A. Yes, sir.

37 59 Q (Handing witness a paper.) Is this Mr. Barlow's receipt for that $20,000?

A. This paper is Mr. Barlow's receipt for $20,000.

60 Q. State in whose handwriting the body of that receipt is.

A. It is in Mr. Nathaniel Wilson's handwriting.

(The receipt is offered in evidence and marked "Exhibit S. S. H., No. 4." Mr. Wilson objects.)

61 Q. Look at the letter now shown you, and state in whose handwriting that is.

A. It is in Mr. Barlow's handwriting.

62 Q. (Handing another paper.) Is this paper the one that was enclosed with the one you have just been looking at, being copies of telegrams referred to in that letter?

A. Yes, sir.

(The letter from Mr. Barlow, dated June 1, 1878, and enclosure therein referred to are offered in evidence, and marked, respectively, "Exhibit S. S. H., No. 5, and S. S. H., No. 6." Objected to by Mr. Wilson, as immaterial and incompetent.)

63 Q. Look at the letter now shown you, dated March 31, 1878, and state whether that is in Mr. Barlow's handwriting, and whether it was received by you.

A. Yes, sir; this is in his handwriting, and was received by me.

64 Q. You are familiar with Mr. Barlow's handwriting?

A. Yes, sir.

(The letter is offered in evidence by Mr. Mattingly, and is marked S. S. H., No. 7. Objected to by Mr. Wilson.)

65 Q. Did you sell the California and Oregon route upon your own motion, or after consultation?

A. After consultation with Mr. Nathaniel Wilson.

66 Q. Did you consult with Mr. Barlow?
A. Mr. Barlow and Mr. Wilson both thought it would be better for C. C. Huntley's interest and my own interest to dispose of it.
67 Q. Which was the principal contract the Northwestern Stage Company had from July 1, 1874?
A. It was from Kelton to The Dalles, 750 miles long; it was first awarded to De Lacey, and afterwards to A. E. Bradbury, at $134,000 per annum.
68 Q. Who got the contract from Bradbury?
A. He put in a bid at my request, and at my request he
38 gave a power of attorney to Mr. Barlow to collect the pay.

(Mr. Mattingly reserves the right to ask any further direct questions hereafter, if, upon reflection, he deems it necessary.)

Cross-examination by Mr. WILSON:

69 Cross-q. In what year did you first go to Montana?
A. In 1867.
70 Cross-q. Where had you been residing prior to that time?
A. I was in a commission house in New York city.
71 Cross-q. In what occupation were you engaged?
A. Salesman.
72 Cross-q. What salary were you receiving?
A. $1,200 or $1,500 a year.
73 Cross-q. In whose employ were you?
A. Metcalfe & Gibbs.
74 Cross-q. In what business were they engaged?
A. Live-stock.
75 Cross-q. What was your age at [that] time?
A. 26 years.
76 Cross-q. Where did you go first when you visited Montana?
A. I went to Helena.
77 Cross-q. What service did you first perform?
A. The first service I performed was in the office.
78 Cross-q. In whose office?
A. C. C. Huntley's.
79 Cross-q. Had he at that time any mail contracts?
A. I think he had one, and a one-third interest in another.
80 Cross-q. What was the one that he had?
A. From Walla Walla to Missoula, 450 miles.
81 Cross-q. Was it stocked?
A. No, sir.
82 Cross-q. Had he began to carry the mails.
A. It was sublet, I think, while I was up there.
83 Cross-q. What capital had you at that time?
A. A few hundred dollars.
84 Cross-q. Did you take it with you?
A. Yes, sir.
85 Cross-q. How many hundred dollars?
A. $400 or $500.

86 Cross-q. What was the nature of the duties performed by you when you first went to Montana?

A. The very first thing I went into the office; there I kept the books and started the stage, and did the express business connected with the stage companies, which last only a few months.

87 Cross-q. What change was then made in your occupation?

A. C. C. Huntley took a one-third interest in carrying a horse-back route from Helena to Fort Abercrombie, and C. C. Huntley, myself, and about a dozen others started down over the road on horseback to stock it; the length of the route is seven or eight hundred miles, and C. C. Huntley entered into some agreement to carry one-third of it for one-third of the pay; we came part of the way over the road, and Charlie had a prisoner with him, that he was bringing East, and he took the steamer on the Missouri river and came on down on the stage, while I remained there stocking the line; I ran the road that fall and winter, and until some time next spring; during that time we had 2 or 3 men killed, and the 40 or 50 horses we had taken on the road were all killed, and we got off without any stock.

88 Cross-q. What moneys did you receive from C. C. Huntley in respect of your compensation during the time you are speaking of?

A. I never received or used any great amount, scarcely any, while I was in Montana; while I was out on this road of course we were camping out and living out; before that, and afterwards, when we got the stage business up there, no stage proprietor ever paid any bill at a hotel or wherever he traveled.

89 Cross-q. When you came back from the Fort Abercrombie route what then was your occupation?

A. Charley was in Washington, and the road from Helena to Missoula was being run at a low figure, and he wanted me by telegram and letters to get that man to throw up his contract, and if I succeeded to telegraph him in Washington. I did so, and the next day Charley telegraphed me that he had secured the contract for this route that the man had failed on, from Helena to Missoula, 150 miles.

90 Cross-q. What had you to do with the running of that road?

40 A. Charley secured a special contract for five months; I had the entire control of it up there, and sublet it for three months to parties who stocked it; I paid them $3,000 each month for running it, and at the end of three months I bought their stock of them, and then I ran it myself for the remaining two months, and with my receipts up there after I had collected, and with the mail pay Charley had collected in Washington, I paid the sub-contractor for the three months and paid for the stock on the road, 150 miles.

91 Cross-q. Did you have an opportunity to take from the moneys received from the business such sums as you thought necessary for your expenses and compensation?

A. I had charge of all the moneys collected in the stage and ex-

press business in Montana, and could use it for whatever purpose I saw fit.

92 Cross-q. Did you keep an account of your own personal expenditures?

A. I have no account.

93 Cross-q. I said did you keep an account?

A. I kept books and accounts of the receipts of all the roads and deposited in the bank.

94 Cross-q. Did you have authority to check on the bank for any sum that you might deem necessary?

A. Yes, sir; I deposited in the bank and checked out.

95 Cross-q. In whose name?

A. C. C. Huntley's.

96 Cross-q. Did you keep an account of your own personal expenditures?

A. Yes, sir.

97 Cross-q. Have you got that?

A. I have not.

98 Cross-q. Is it in existence?

A. I looked for it while in Montana last summer, but I could not find it; I left all the books up there, such as we did have, in a safe, and the safe has been taken and all the proceeds, I think; I cannot find it.

99 Cross-q. In July, 1874, were you the owner of any property, securities, or any other valuable thing, in your own name?

A. Only the one-half interest in the stock on the Sweetwater Stage Line.

100 Cross-q. You owned no real estate?

41 A. No real estate.

101 Cross-q. Or personal property, or any other kind?

A. No personal property of any amount.

102 Cross-q. What was the value of the stock in which you had a one-half interest?

A. Probably $10,000 or $15,000.

103 Cross-q. Had you, prior to that time, made any considerable expenditure for the support of any other members of your family?

A. No, sir; I had not.

104 Cross-q. Had you remitted any moneys to any other members of your family during that time?

A. Yes, sir.

105 Cross-q. To whom and in what amount, approximately?

A. To my sister, probably $500.

106 Cross-q. Not more than that?

A. No, sir; I think not.

107 Cross-q. In what contracts had you a joint interest with C. C. Huntley prior to 1874?

A. Some contracts in Kansas and Nebraska and Wyoming Territory.

108 Cross-q. How was that joint interest created?

A. I put in the bids myself, and did all of it, and said I would

take half; it was farther east than we were in the habit of doing business at that time.

109 Cross-q. Had you up to that time any written agreement or memorandum of any kind with C. C. Huntley in relation to your business?

A. I have had no written agreement with C. C. Huntley.

110 Cross-q. Nor any memorandum of any agreement?

A. No, sir.

111 Cross-q. Had you ever, up to that time, applied to him for the payment to you of any compensation for your services?

A. No, sir; I had never asked for a settlement.

112 Cross-q. Have you now any recollection of the aggregate amount of your personal expenditures, as shown by the books to which you have referred?

A. My own personal expenses were comparatively nothing.

42 113 Cross-q. Have you any recollection of the amount as shown by the books to have been drawn by you personally for your own use?

The WITNESS: Those books in Montana, you mean?

114 Cross-q. Mr. WILSON: Yes.

A. No, sir; I had no hotel bills to pay there, and not very many clothes; I would occasionally get a suit sent out to me from New York by C. C. Huntley, or an old suit that he would drop when he was out there; the first part of the time I attended to the box office in the theatre, and made $40 or $50 a night in that.

115 Cross-q. Who owned the theatre?

A. C. C. Huntley and a man by the name of Gardiner.

116 Cross-q. Do you know what capital C. C. Huntley had at the time you went out there?

A. $4,000 or $5,000, I should suppose.

117 Cross-q. In whose name was all the business carried on?

A. C. C. Huntley's.

118 Cross-q. His name alone appeared on the books and bank account?

A. Down in Wyoming it was Huntley & Co.

119 Cross-q. Who was interested with him down in Wyoming?

A. Myself.

120 Cross-q. Did you ever at any time have any conversation with him as to the worth of your services per annum?

A. I do not remember that I had; in 1870 I was partner in Montana for about 30 days.

121 Cross-q. In 1874, you state, you had no property of any kind; at the end of the term, from 1874 to 1878, what personal property or real estate had you, in aggregate?

Objected to by Mr. Mattingly, as immaterial.

A. $50,000 or $60,000.

122 Cross-q. Irrespective of your interest in this Northwestern Stage Co.?

A. Yes, sir.

123 Cross-q. Of what did that consist?

A. It consisted of a little real estate and stock in Montana.

124 Cross-q. How had that been accummulated?

A. It had accumulated from the lines in which I had an
43 equal interest with C. C. Huntley, and from some routes of my own, and from others in which I was interested with other partners, as well as from stock business that I had been engaged in for three or four years in Montana.

125 Cross-q. What was the aggregate profit realized from the lines in which you were interested with C. C. Huntley, other than the Northwestern Stage Co. lines, for the contract term ending in 1878?

A. I had about $40,000 myself, I should think.

126 Cross-q. And the remainder of the property which you were worth in 1878 you had accumulated from your interest in other contracts?

A. From other contracts and from sheep that had been doubling up occasionally.

127 Cross-q. Did you receive a salary as manager for the Northwestern Stage Co.?

A. Part of the time I did.

128 Cross-q. What was it?

A. I think about $500 a quarter.

129 Cross-q. What part of the time?

A. For the first 15 months.

130 Cross-q. Why did it end at the end of the first 15 months?

A. Because Mr. Barlow refused to allow it any longer; he held the money.

131 Cross-q. Did the Northwestern Stage Co. have a general superintendent?

A. Yes, sir.

132 Cross-q. Who was he?

A. William B. Morris; he received $5,000 a year, and the assistant superintendent, A. H. Boomer, received $3,000.

133 Cross-q. Can you refer to any paper writing that was executed prior to the date of the execution of the paper "marked Exhibit S. S. H., No. 1," showing the interest owned by you in the Northwestern Stage Co.?

A. No, sir.

134 Cross-q. What was the value of the stock owned by the Northwestern Stage Co. in July, 1874?

A. Probably $90,000, and at the end of the contract term it sold for $60,000; and it was better at that time than it was in the first place, in my judgment.

135 Cross-q. At the time of the execution of the paper
44 marked "Exhibit S. S. H., No. 1," did C. C. Huntley execute to you a general power of attorney?

A. He did.

136 Cross-q. Please produce it.

A. I have never used it, but I think I returned it to him; I do not know what ever became of it; I haven't it now.

137 Cross-q. Are you sure?

A. I haven't it that I know of; I never had any use for it.

163 Cross-q. Where did that conversation occur?

A. In your office.

164 Cross-q. What did he say about it?

A. There was nothing done in the case. At that time I did not really know what the interest that I had taken *had taken* had cost. I afterwards found the bill of sale from Parker to Huntley,
47 and figured out the interest that I really held cost less than $40,000, while Charlie and you claimed that it had cost $75,000.

165 Cross-q. Did I not at that time urge you to have a definite understanding as to what your interest was?

A. Yes, sir; you said I had better.

166 Cross-q. Did you at that time show me this paper marked "S. S. H., No. 1"?

A. No, sir; I do not remember that I did.

167 Cross-q. Did you ever have any conversation with Parker about the sale?

A. I do not remember that I had.

168 Cross-q. Then I understand you to say that you did not pay any money or valuable consideration other than your services and the interest you have mentioned for the share you claim in these two companies?

A. No, sir; I did not.

169 Cross-q. In respect of any indebtedness that occurred in the business of the company, have you ever paid or made any contribution towards the payment of any sums of money other than the moneys earned by the company, or the proceeds of the sale of the Oregon interest?

(Objected to by Mr. Mattingly, because, in the first place, it has not been shown that there was any indebtedness which would require any contribution, and because, so far as it appears at present, all the receipts and financial management of the road were under the control of Mr. Barlow.)

A. I have not.

170 Cross-q. For what were the notes given which were signed by you, and which are referred to in Barlow's receipt?

A. They were for the losses sustained, for the reason that the road had been running behindhand during the first part of the contract, and buying up bids, and buying off different parties, and paying J. W. Parker $25,000 damages that he claimed under the previous contract when he was interested in the company, and buying off an attorney who had been engaged for the contract term.

171 Cross-q. You have made no contribution towards the payment of that indebtedness, or any indebtedness of the company, except your contribution of the proceeds of the sale of the Oregon route and the earnings of the Northwestern route, have you?

48 A. No; it was not necessary, as he held from that time on more than enough of dividends coming to us to pay that indebtedness. At the time the notes for $27,758.05 were given we were not indebted to him.

172 Cross-q. What was the value of the stock owned by the California and Oregon Co. in July, 1874?

A. Probably $30,000.

173 Cross-q. The stock in the two companies, then, was worth about $120,000?

A. Yes, sir.

174 Cross-q. As you understand it, then, in settlement for the amount due to you from C. C. Huntley up to 1874, you received one-fourth of the value of the stock of the Oregon route ($7,500) and one-sixth of the stock of the Northwestern Stage Co. ($15,000), and whatever money in addition C. C. Huntley paid for that one-sixth interest?

A. I received the one-fourth interest of the California and Oregon and one-sixth interest in the Northwestern, and that is all I received.

175 Cross-q. What do you know, or what do you understand, that that cost C. C. Huntley?

A. In the first place he paid Parker $75,000 for a one-fourth interest in the California and Oregon road, and two one-sixth interests in the Northwestern Stage Co.'s road, and for a list of bids that he held, and for accumulated dividends in Barlow's hands, all properly belonging to Mr. Parker up to July 1, 1874; for all these he paid $75,000.

By Mr. MATTINGLY:

176 Cross-q. The question is what your interest cost?

A. I should think that my interest cost C. C. Huntley $30,000.

By Mr. WILSON:

177 Cross-q. Do you know that, or do you figure it?

A. I figure it.

178 Cross-q. How do you arrive at that result?

A. I figure that he paid $75,000, and that there was $25,000 of it dividends; that left $50,000 for the stock. I claim that the California and Oregon was worth $10,000 off of the $50,000; that would leave $40,000 for the Northwestern Stage Co. He sold half of it to Mr. Barlow; half of $40,000 would be $20,000; add the California and Oregon to it ($10,000) would make $30,000 for my interest.

49 179 Cross-q. Have you made any examination to see what one-sixth of the profits of the Northwestern Stage Co. amount to for the whole term ending June 30, 1878?

A. Yes, sir; the profits would be about $35,000, and the stock would be $10,000 or $12,000 more.

180 Cross-q. That means the entire profit for the whole term?

A. Yes, sir; that is, the one-sixth would be about that.

181 Cross-q. And on the California and Oregon?

A. No; that is including both. It is the loss and bill of sale and everything figured in to close that business and the other business.

182 Cross-q. There never was any profit on the California and Oregon?

A. No; that ran at a loss all the time we run it.

183 Cross-q. And the two were settled together, were they not?

A. No, sir; they were kept separately, but the addition was then made.

184 Cross-q. I mean when you came to the settlement, they were settled together?

A. I figured in the $27,758.05 notes, and subtracted the $20,000 sale.

185 Cross-q. But before that—the losses on the Oregon road?

A. That was all figured in. In that $27,758.05 both roads were figured together.

186 Cross-q. Have you any written evidence of any kind of your interest in the California and Oregon line?

A. Only what is put in evidence here.

187 Cross-q. To what do you refer?

A. I refer to the agreement with Mr. Sanderson in regard to settling all liabilities of the road and the receipt from him for $20,000 given me for my one-fourth interest and C. C. Huntley's one-fourth interest.

188 Cross-q. Who collected the money on the California and Oregon route?

A. Bradley Barlow. He collected all the money and I did all the work.

Adjourned to 3 o'clock p. m., Monday, February 9, 1880.

FRIDAY, *February* 13, 1880.

50 Met by agreement, the previous appointment having been passed by consent.

Present: Mr. Mattingly, for the plaintiff; Mr. Wilson, for the defendants.

Cross-examination of S. S. HUNTLEY continued:

189 Cross-q. I suppose you have not in your possession the letter that was written to you by C. C. Huntley asking you to go to Montana?

A. I never had any letter written to me to go to Montana.

190 Cross-q. What was it? A dispatch?

A. No, sir; he came for me and requested me to go.

191 Cross-q. When he requested you to go, nothing was said about the compensation you were to receive?

A. Only that I could make a great deal more money there than I could make East.

192 Cross-q. Was anything said about salary?

A. No, sir.

193 Cross-q. When you got out there was not C. C. Huntley running a route from Helena to Fort Benton?

A. I believe he had the route from Helena to Fort Benton, upon which the mail pay expired about the time I got there, or a couple of months later.

194 Cross-q. That route was stocked?

A. Yes, sir.

195 Cross-q. What was the value of the stock, approximately?

A. I suppose $3,000 or $4,000.

196 Cross-q. What was the length of the route?

A. 150 miles.

197 Cross-q. Did he not have a contract for carrying the mail from Missoula to Walla Walla?

A. He got that while I was with him here in Washington, in the winter before I went out there.

198 Cross-q. That was the Allman contract, was it not?

A. Yes, sir.

199 Cross-q. That was sublet?

A. It was sublet after I was here; I do not remember whether it was after I got out there, or about that time.

200 Cross-q. Did he not also have a route at that time from Helena to Diamond City?

A. I believe he had.

201 Cross-q. That was sublet, was it not?

51 A. It was sublet after I went out there, I think, or about that time.

202 Cross-q. You said that you had a half interest in the Sweetwater route?

A. Yes, sir; I purchased it myself, and it was all in my name.

203 Cross-q. Who bought the stock on it?

A. I bought it with money that I took out there that I received from the outfit.

204 Cross-q. What did it cost?

A. About $12,000; that included some mail pay that was immediately collected by C. C. Huntley on a dispatch from me.

205 Cross-q. The stock was not bought by C. C. Huntley with his own money?

A. It was bought with money that he gave me from the concern when I left here.

206 Cross-q. When was that purchase made?

A. I think it was in 1870.

207 Cross-q. What was the cost of the stock?

A. About $11,000 or $12,000; that is what I paid for the stock, including some mail pay.

208 Cross-q. Was any part of that money your own individual contribution?

A. I never had any money of my own except the four or five hundred dollars that I first put in out there, or except what I was working for; I never had any division of any accounts.

209 Cross-q. Did C. C. Huntley have a route from Helena to Bozeman?

A. He had after I got it.

210 Cross-q. Who stocked it?

A. I went over the road on horseback before there was ever any mail on it, and got up petitions for service once a week, and afterwards got up petitions to have it extended, and then got up petitions to have it increased, and then, after getting the contract, I sublet the route to a man by the name of Donahue.

211 Cross-q. You never stocked the route?

A. No, sir.

212 Cross-q. Do you know what C. C. Huntley's interest first owned by him in the Northwestern Stage Co. cost?

52 A. I do not; he paid $100,000 for his interest in the Northwestern Stage Co. and contracts, and in the California and Oregon Co., including certain moneys, contracts, and so on; I do not know what it included exactly.

213 Cross-q. From whom was that purchased?

A. Owen Teller.

214 Cross-q. You said that C. C. Huntley's condition was the same at the time he signed the contract as it is now; what is his physical condition now as to his ability to attend to business?

A. He claims that he is well enough to attend to business, and tries it. I do not know what his condition is any better than other people do.

215. Cross-q. Is he able to attend to business?

A. I do not know whether he is or not; he tries it.

(Mr. Wilson having stated that he thought his cross-examination of the witness was finished, the witness stated that he desired to make some corrections to his answers given in his previous examination, but did not desire to do so at present, as he had not the memorandum with him which he had prepared for that purpose.)

Adjourned to 3 p. m. to-morrow, February 14, to meet at Mr. Mattingly's office.

THURSDAY, *February* 19, 1880.

Met pursuant to agreement at Mr. Mattingly's office, the appointment for Monday, 9th inst., having been passed by consent.

Present: Mr. Mattingly, for the plaintiff, and Mr. Wilson, for the defendants.

Redirect examination of S. S. HUNTLEY by Mr. MATTINGLY:

216 Q. You stated that you desired to make some corrections of your testimony? Please state what they are.

A. On page 8 I said I drew no money except for my board and clothes; I want to add to that, "and except small amounts for myself and about $500 for other parties." On the same page I say there were no books kept. I want to modify that and say that there were books kept in Montana, in Boise City, Wyoming, and here, but they were never all put together and balanced.

217 Q. Please state what routes were operated by the Northwestern Stage Company from 1874 to 1878.

53 A. The route from Kelton to The Dalles, daily, about 750 miles long, the mail pay being about $135,000 a year.

Winnemucca to Boise City, about 300 miles long, about $45,000 per year mail pay.

From Boise City to Placerville, 100 miles long, daily.

Boise City to The Dalles, about 400 miles long, three times a week.

From Boise City to Rocky Bar, three times a week, about 100 miles long.

From Cañon City to Camp McDermott, about 200 miles for part of the time.

And several smaller routes. The mail pay of all of them amounted to about $225,000 a year, I think.

218 Q. You were asked on cross-examination as to what duties you had to perform when you first went West, in 1867, and I see they are not very clearly stated, or that they are interrupted with other matters. Please give us an idea, as clearly as you can, as to what your duties were during that time, and what you did between 1867 and 1874.

A. In the previous answer to that question I stated that my first duties in Montana were book-keeper, staging, in charge of the express office, and in charge of the office at Helena. In a few months C. C. Huntley quit staging on the Helena and Benton road, and our stage office was closed. They then undertook to carry it on horseback, from Helena east about 300 miles through the heart of a very bad Indian country. C. C. Huntley went over the route and took his departure on the steamer *via* the Missouri river for the States. I stocked the line, put up well-built stations, and remained on the line that summer, fall, and most of the winter, as sole manager of the route, exposed to hardships and the greatest dangers. My life was in danger every moment. I was obliged to carry a revolver and Henry rifle, and most of the time sleeping with my clothes on. C. C. Huntley during that time was in the States, becoming involved in a lawsuit, which kept him East nearly all the time for three or four years. After handling these routes, and having a number of horses and men killed by the Indians, I went to Helena and started on horseback over the route between Helena and Bozeman, getting up petitions, letters, and recommendations for the establishment of a mail route from Helena, 120 miles. The
54 petitions were granted and service ordered. I started to stock the route to carry the mail when another party by the name of Donahue was stocking the road for travel. I told him I had the contracts for carrying the mail and for stocking the road, but I would not stock the road, but he could have it to himself if he would carry the mail for nothing. This he agreed to do, and so did, and C. C. Huntley drew the mail pay in Washington. This route continued in our hands for eight years, nearly. From 1870 to 1874 I sublet it to H. F. Galen, and my books show a profit for those four years of $45,000.

Soon after and about the time of securing this route, I induced a contractor by the name of Oliver to fail on that contract from Helena to Missoula, 150 miles. I telegraphed the information to C. C. Huntley in Washington, and he secured the contract special for five months. I have already related how I stocked the route for three months, and then purchased the stock on the road, paying for the entire outfit in five months.

Afterwards, the mining camp called Cedar Creek sprang up sixty miles from Missoula, and on letters, petitions, etc., to Washington, I got our contract extended to that point. I stocked the road with

four-horse stages, and was general and entire manager of the entire road, 200 miles long, keeping an account with all offices, making all collections from different agents, buying horses, contracting for hay, grain, and supplies, and paying for the same same.

My business on this route, according to my books, netted from $1,500 to $2,000 profit per month. This was our stage business in Montana. In addition to that, we secured the mail contract between Bannock and Virginia City, eighty miles, also from Virginia City to Bear Town, over two hundred miles long. These routes were carried on horseback or in sulkies, my brother, Charles Huntley, assisting me. His wages were invested in Cedar Creek station, together with his salary of $300 per month as U. S. collector; and at his death, and on the sale of the Cedar Creek road, the proceeds of the station properly belonging to my brother were given to C. C. Huntley. Over the horseback routes I went and personally made final settlements. Other routes we had and sublet: Virginia to Bozeman, ninety miles; Bozeman to Emigrant Gulch, eighty miles; Helena to Lincoln; Helena to New York Gulch;
55 Blackford to Lincoln; Missoula to Stevensville, and others. I went over all the routes, subletting and managing them. Went to Salt Lake City, 500 miles by stage, to sublet some routes. Succeeded in subletting some, and got others discontinued. I went over the route from Walla Walla to Missoula, 450 miles, on horseback and induced the sub-contractor, after I had taken items on the road, to carry the route at $5,000 or $6,000 less per annum than he had been receiving, and sublet other routes in the vicinity of Lewiston, Idaho. C. C. Huntley, all this time, was East, with the exception of an occasional trip to Montana for a few days.

Afterwards, while East, C. C. Huntley purchased all of Owen Teller's interest in the Northwestern Stage Co. and in the California and Oregon Co. I took the first trip over these routes with C. C. Huntley, giving him suggestions and making use of experience gained in Montana. From that date until 1874 my business was similar. For the first four years I never came East, but during the last four years I did occasionally.

(The witness left the stand temporarily in order to give place to the witness, J. W. Parker.)

J. W. PARKER, having been duly sworn, testified as follows:

By Mr. MATTINGLY:

1 Q. Please state what interest you had in the Northwestern and in the California and Oregon Stage Cos. prior to July 1, 1874.

A. I had a one-third interest in the Northwestern and a one-fourth interest in the California and Oregon Stage Co.

2 Q. To whom did you sell out your interest in those companies, and when?

A. I sold out some time about the last of June, 1874, to C. C. Huntley. I am not certain but that Mr. Barlow was a party interested in the sale. I cannot remember clearly to whom the papers were made. He was apparently interested in the purchase.

3 Q. What was the consideration?

A. $75,000.

4 Q. Did Mr. Barlow take part in the negotiations before the purchase?

56 A. He did.

5 Q. Actively?

A. Yes, sir.

6 Q. In that sum of $75,000, please state whether your share of the profits which had been earned, but not divided, was included; if so, what did that share amount to?

(Question objected to by Mr. Wilson, as immaterial and incompetent.)

A. My recollection is that in the negotiation the estimates upon the property were made at the rate of $40,000 for the interest in the Northwestern Company, $10,000 for the interest in the California and Oregon, and the balance of the $75,000 (in other words, $25,000) was in consideration of undivided profits; but I cannot say but that there were other considerations about it. I remember that the estimates of the property were about that. There was some discussion as to the relative values, but that was about the basis.

7 Q. At what was your share of the undivided profits estimated?

A. I do not think it was clearly defined. It was estimated variously by the parties in interest. I estimated it at probably $25,000. I claimed that there was that much. I think Mr. Barlow claimed that there was not so much, but only something like $20,000. I speak now according to my recollection of it.

8 Q. Where do you reside?

A. In Atchison, Kansas.

Cross-examination by Mr. Wilson:

9 Cross-q. When did you say this sale was made by you to C. C. Huntley?

A. I cannot state positively as to the date; it has been five or six years ago, and I do not remember the particulars.

10 Cross-q. (Handing witness Defendants' Exhibit No. 1.) Refresh your recollection from that paper?

A. I should suppose from this paper that it was the 27th June, 1874. This is evidence to my mind that that was the date.

By Mr. Mattingly:

57 11 Q. I forgot to ask you how long prior to the 27th June, 1874, when you executed the bill of sale, the negotiations for the purchase had been going on.

A. I cannot remember distinctly. I should think the actual negotiations for the property must have commenced but a short time previously. There was an evident intention to make a change in the ownership perhaps two or three months previous to that date, but the actual negotiation which culminated in this transaction was but a short time—I should think not more than a few days at most, or perhaps a week—before. That is my recollection; of course I cannot remember distinctly, so much time has elapsed.

By Mr. WILSON:

12 Cross-q. You say that at the time of that sale there was due you from the company money in respect of undivided profits?

A. I do say that I suppose so; that was the understanding.

13 Cross-q. When was the last settlement of the affairs of the company prior to the date of that sale?

A. That I cannot remember without reference to papers.

14 Cross-q. Are you confident that on the accounts, as they stood at that time, any money was due to you in respect of your share in the company?

A. Yes, sir; I feel confident that there was.

15 Cross-q. Was any account stated?

A. No, sir; not in this settlement. There was no statement of account until this negotiation was terminated. We, of course, had our ideas.

16 Cross-q. There had been up to that time no settlement?

A. No settlement for that present term.

17 Cross-q. For the term from 1870 to 1874?

A. No entire settlement. We were in the habit of settling every quarter; that is, either to have dividends made or assessments, as the case might be.

18 Cross-q. Had there been any settlement for the quarter ending with June, 1874?

A. No, sir; there could not have been, because it would have been impossible.

19 Cross-q. Did you, after the execution of that bill of sale,
58 demand and receive from the company any other moneys in respect of your share in the profits or property of the company?

A. That I cannot answer, because I cannot clearly state what the consideration was.

20 Cross-q. After the execution of that paper (Defendants' Exhibit No. 1), were you paid the moneys by the company; and, if so, what was the consideration?

A. That I cannot answer; I was paid moneys, but whether I was paid moneys by individuals or by the company, or what the consideration was, I cannot clearly state; I might, perhaps, by reference to papers.

21 Cross-q. How much money?

A. $25,000.

22 Cross-q. Was not that claim made by you upon the company because of your former interest in the company?

A. I cannot answer that. I cannot say that it was or was not. That may have had something to do with the claim. Beyond that I cannot say.

23 Cross-q. Was not that claim based upon the assertion by you that you were entitled to certain profits of the company for the term prior to July 1, 1874?

A. No; it was not based upon that. It was not based upon a demand for the profits shown by any settlement.

24 Cross-q. What was it for?

A. The consideration was partly for salary due me, and partly for something else, which I cannot remember now; but I can ascertain by reference, if desired.

25 Cross-q. I only wanted to see whether it was connected with these business profits.

A. No; it had no connection with that.

26 Cross-q. With whom were the negotiations for the sale carried on?

A. With C. C. Huntley and Mr. Barlow.

27 Cross-q. Where?

A. I cannot remember now distinctly. There was some conversation at the Arlington Hotel about it, and that is where the thing was consummated. The negotiations were pending, perhaps, for a day or two before that.

Redirect examination by Mr. MATTINGLY:

Q. 28. Did you give Mr. Barlow a receipt for $25,000, specifying what it was for?

A. I gave a receipt stating what it was for, showing what this money was paid for.

J. W. PARKER.

59 Adjourned to 7.30 p. m. to-morrow, to meet at Mr. Mattingly's house, 1616 H. St. N. W.

THURSDAY, *March* 4, 1880.

Met by agreement, the preceding appointment having been passed by consent.

Present: Mr. Mattingly for the complainant; Mr. Wilson for the defendant.

Redirect testimony of S. S. HUNTLEY resumed, by Mr. MATTINGLY:

219 Q. Did you preserve the telegraphic dispatch you testified as having received from C. C. Huntley, announcing the purchase of Parker's interest, or what has become of it?

A. I do not know what has become of it. I was not in the habit of keeping any dispatches or letters from him.

220 Q. What is the difference in the age between you and C. C. Huntley?

A. I am two or three years older than he is.

221 Q. You have testified that for the first fifteen months, from July, 1874, you received $500 a quarter as general manager of the Northwestern Stage Company. Please state what became of that $500 per quarter, and how it was paid.

A. I was allowed $500 a quarter for my services, but the roads were running behindhand during that fifteen months' time, and in the settlement with Mr. Barlow of, I think, February, 1876, he credited C. C. Huntley and myself for five quarters, at $500 a quarter. I never actually drew out the money, but was credited with half of that amount, and C. C. Huntley with the other half. That left the balance of our indebtedness to Mr. Barlow about $27,000.

222 Q. Then I understand that C. C. Huntley derived as much benefit from that $500 a quarter as you did?

A. Yes, sir; for the first five quarters he derived just the same benefit that I did. During that first five quarters I was superintending the routes out there, and I paid out of my own pocket all travelling expenses, and all expenses I incurred, except when on their own stage line.

60 223 Q. In answer to interrogatory No. 139, referring to C. C. Huntley, you say: "I could draw on him at any time." Please state how that ought to be.

A. I meant that I could draw on the bank at any time. I never, to my recollection, drew on C. C. Huntley, but I always drew on the bank, either in Montana or New York or Washington, signing my own name or the name of C. C. Huntley.

224 Q. State what Mr. Morris's duties were as superintendent of the Northwestern Stage route.

A. He was called superintendent of the company, but his principal business was office work. He had charge of all the accounts of the company, and was really an expert accountant, and knew, practically, nothing about staging; and for his services he received $5,000 a year.

225 Q. What were the usual salaries for book-keepers in that section of the country at that time?

A. Five thousand a year would be the highest, and from that down to $2,500.

226 Q. What wages did drivers receive?

A. They varied very much. When I first went out to Montana we paid as high as $150 a month in gold; afterwards it got down to $75 in greenbacks and about $65 in gold in California and Oregon. At that time gold was at a premium of from 130 to 140.

227 Q. As to your personal expenses during the years from 1867 to 1874, please state what occasion you had to use money, and for what purpose, and also what opportunities there were for spending money?

A. Most of that time I was in Montana. The first part of it there was little or no occasion for me to use money, for the reason that I was connected with the stage business, running stage lines; and out there it was a general rule that all proprietors of hotels and eating-houses never charged stage people anything whatever. They considered it a sufficient recompense to them to have the stages, with their travel, stopping with them. They never charged stage proprietors, agents, or drivers anything for their meals. Consequently I had no board to pay; and we always had plenty of horses and buggies, so that I had no occasion to use any money for anything of that kind; and we had our own theatre, so that I never incurred any expense for attending theatre or other places of amusement. In fact, I had no habits of drinking, smoking, or using to-

61 bacco; consequently my expenses would be very small indeed.

228 Q. About how much, as near as you can get at it, would they amount to?

A. Not more than $250 a year.

229 Q. You have stated in your cross-examination that at one time you made from $40 to $50 a night by standing at the office of the theatre. Please explain how that amount was made by you and what disposition was made of the money.

A. That amount I made while attending the box-office at the theatre that was owned by C. C. Huntley and another man when I first went to Montana. It was made in this way: People who went in the theatre were charged $2 per ticket in gold dust, that being the principal medium of exchange in that country. Each buyer of a ticket had to hand in his little buckskin sack of dust and have $2 worth weighed out, and, in doing so, full weight or down weight was taken, that being the universal custom. The surplus on the whole aggregate sales of from 500 to 700 tickets of an evening would amount to from $30 to $50, which, after redeeming the tickets, I would retain and expend either for myself or for the company, just as it happened. Also, when I went to Montana I had $400 or $500 of my own—all I had—which I used on my own personal expenses or the expenses of the company, just as it happened.

230 Q. Please examine the paper now handed you marked "Exhibit S. S. H., No. —," and state what that is.

A. This is a bill of sale of the Sweetwater Stage Line from William Benham to S. S. Huntley for $12,000. This $12,000 included about $2,000 of mail pay that had already accumulated, which I telegraphed to C. C. Huntley to collect, and which he did, in Washington. The route at that time was being carried for about $2,800 per annum ($8 or $9 a day). I immediately made a special contract with the postmaster at Bryan for forty days at $100 a day, making $4,000, which was collected by C. C. Huntley in Washington, leaving the actual cost of the road about $6,000, with stock and supplies for several months.

(The paper referred to in the last interrogatory is offered in evidence by Mr. Mattingly, and is marked "Exhibit S. S. H., No. —.)

62 231 Q. During the time that contract was run, what amount of profits were derived?

A. C. C. Huntley had tried to purchase the route, and not being able to came on to Washington and told me if I could I could have a one-half interest, and he would furnish the money; and after purchasing that line, the contract for carrying the mail was raised to about $10,000 per annum, and was continued during the contract term, and that amount was collected by C. C. Huntley; and the express and passenger business of the road about cleared the running expenses, so that just about the mail pay was the amount that was cleared, and C. C. Huntley has had the benefit of it. It has never been divided.

232 Q. How long was it run, and what was the gross amount of profits?

A. The date of this contract is January, 1871, and from that date to July 1, 1874, three and a half years, at the rate of about $10,000 per annum, it would amount to about $35,000; one-half of that I ought to have been entitled to—from $16,000 to $18,000.

233 Q. Did you ever receive that money?

A. I never received anything in money; I never received it at all, except for my interest that I acquired in the Northwestern Stage Co.

234 Q. You refer to this one-sixth interest, the subject-matter of this suit?

A. The one-sixth interest I acquired in the Northwestern Stage Co. from 1874 to 1878.

235 Q. From your testimony it appears that the agreement with C. C. Huntley with you to have this interest in the Northwestern and California and Oregon stage routes was made in Salt Lake, and that the release by you of your claims against him was agreed upon in San Francisco. Please state more fully what the understanding of C. C. Huntley was, as to your having this interest and where it was talked over between you.

A. As soon as it was known that the routes comprising the Northwestern Stage Co. were awarded to William DeLacey, C. C. Huntley, who had for some time been quite anxious to get Mr. Parker out of the company, felt confident that he could do so. I talked the matter over with him, to the effect that as soon as Mr. Parker's interest was purchased I should have his interest, or so much of it as
63 would make me equal partner with him, in order to get Mr. Parker out of the company. C. C. Huntley tried to purchase Parker's interest before I left here in June, 1874, but could not succeed in doing it, and I left. While somewhere in Oregon, some time about the 1st of July, C. C. Huntley telegraphed me that he had purchased that interest, and I immediately understood that he had purchased Parker's interest for me according to the way we had talked it over. Soon after that, some time in July, I came down to Salt Lake and met C. C. Huntley, and he told me, as he had already telegraphed, that he had bought the interest for me, and we talked the matter over there, to the effect that I should go ahead and manage the routes. We also talked the matter over on the cars as I went with him from Salt Lake to San Francisco. And finally in San Francisco it was agreed what I should pay for it, and it was to cancel all his indebtedness to me up to that date. It was fully understood between him and myself, as much as six months before the purchase was made, that the interest was to be mine if he could buy it. That was one reason why we had De Lacey bid the routes off. C. C. Huntley and I talked the matter over there. Instead of having other men bid the routes off, we knew that if had De Lacey bid them off, we could have it in our hands and force Mr. Parker to sell to us.

236 Q. Please state whether you had introduced De Lacey to C. C. Huntley before Parker introduced him to C. C. Huntley.

A. Certainly. I first knew De Lacey and introduced him to C. C. Huntley. It was at my dictation that he wrote to the proprietors of the stage company to buy them out, so that Mr. Parker could see that letter and not mistrust that C. C. Huntley and I had anything to do with it; and at my suggestion he called on Mr. Parker and introduced himself.

237 Q. After you had purchased this interest in the Northwestern and California and Oregon routes, as you have stated, please state

what you did in prosecuting and conducting the business of that company.

A. I would like to go back a little further than the purchase to show my connection with it. In order to secure the routes belonging to the Northwestern Stage Co. from 1874 to 1878, which
64 they owned from 1870 to 1874, it was necessary to have a most reliable and trustworthy man to bid at very low figures and secure the routes. I secured the man who bid off all the routes belonging to the company.

It was necessary to know all the postmasters at each end of the routes and to have their confidence, so that we could make special contracts with them at different times. I knew all the postmasters and made special contracts over all the routes when there were failures, and on the longest route made a contract of about $800 a day for carrying the mail for quite a period.

It was also necessary after a failure to have possession of all the bids on the list. Most of those I secured. Mr. Barlow secured some of them by paying high prices, as much as $15,000 for one bid. On the Kelton road, 750 miles long, daily service, Mr. Bradbury put in a bid in the first place at my suggestion. I made out the bid after the failure on the route, and he accepted it at my request at $134,700 mail pay per annum. After accepting this route at my request I made out Mr. Bradbury a power of attorney, and he gave it to Mr. Barlow. Other friends of mine accepted other routes, and some of them, at my request, turned over their powers of attorney to Mr. Barlow, and at my request some turned over their powers of attorney to me, and I again turned them over to Mr. Barlow. Some of the mail routes I secured in my own name, and for those I turned over to Mr. Barlow powers of attorney in my own name, giving him powers of attorney over all the mail routes embraced in the Northwestern Stage Co. contracts.

After the contracts were permanently secured, I came to Washington, and among the changes made I got up the papers and had the route from Pendleton to Scott's, 100 miles long, increased from once a week to three times a week. That was in the name of C. C. Huntley.

I had one-half of the route from Boise City to Cañon City, 200 miles long, discontinued. That was over a rough, mountainous country. On the other half that runs through the valley, and which was settled, I had the service increased.

I had the route from Boise City to Rock Bar, that properly belonged to C. C. Huntley and myself, increased, so that we made
65 about $5,000 a year on it. I turned it over to the Northwestern Stage Co., and gave Mr. Barlow the power of attorney.

The route from Camp McDermott to Cañon City we had taken at quite a losing figure, and at my suggestion and request the Post Office Department discontinued it. We also had one from Silver City to a mining camp, the name of which I forget, where we were losing money, discontinued at my suggestion; and some other

smaller routes, some of which were in my own name, I think, increased.

All this I did personally. I, myself, had the papers drawn up in proper shape and presented to the Department; and the increases were all made at my request and for me. The only increase that I know of during the four years' term that was procured by Mr. Barlow was a route from Elko to Mountain City. No other member of the firm ever had any increase made during that time.

During that four years I was out there two or three times every year, over the whole length of the route, giving general directions to a certain agent, Mr. Morris, and other division agents, and shortening one route 20 miles long, for instance, for a team to travel over once a day, to ten miles a day. I also remember particularly that on the road from Winnemucca to Boise City we had four-horse stock, and the travel not justifying it, I myself went to San Francisco and drew the plans and ordered light two-horse wagons, and made the change from four-horse stock to two-horse stock on 300 miles of road, making some of the stations from 12 or 13 miles to 20 or 25 miles long, and thus saving expenses. I also cut down the wages of drivers and of stock-tenders, and expensive meals where we were obliged to pay for meals—reducing the running expenses of the road from 15 to twenty per cent. at once over the preceding years.

I was the only member of the company who, during the four years, ever went over the road or gave any orders or instructions in regard to running the road. Mr. Barlow never went over the road, nor Mr. Smith, during that four years. I hold that I did nine-tenths ($\frac{9}{10}$) of the work belonging to the Northwestern State Co. that was done, and without my assistance they would not have secured the route in the first place. They could not have secured the large special contracts from postmasters, and they would not
66 have had reliable men to give contracts to that were permanent. All those permanent contractors gave their powers of attorney to Barlow, and after I had done all the work he collected all the pay.

238 Q. State whether, during those four years, from 1874 to 1878, you received any money whatever from the Northwestern Stage Co.

A. All the expenses that I incurred for myself and for the company in attending to their business I paid out of my own pocket. I was allowed for the first five quarters the $500 a quarter which was credited on C. C. Huntley's and my own indebtedness, which, of course, I never drew out. During the balance of the contract term I paid all my own bills, except, of course, when I was on the stage line proper. Then everything was charged to the company. But my travelling expenses, and my expenses of going to New Hampshire one time, and to San Francisco a number of times, and to Portland, and going backward and forward, and all the sundry little items which I never kept any account of, I paid those out of my own pocket, and have never received anything from the company for it. I expected to have been allowed for these sundry ex-

penses $500 a quarter, as I had been allowed the first five quarters. But at the final settlement I objected to some large charges that Mr. Barlow had put in against the company. I would not allow them. Then, when it came to my item of $500 per quarter, Mr. Barlow objected to it, and rather than to have a long fight and dispute over it I agreed to drop it, so that we might come to a final settlement and know what the figures were which were actually coming to me. So I paid all of these items during the contract term out of my own pocket, and have actually never received anything, and only for the first five quarters have I been allowed anything, and that is still in the pool.

239 Q. Did you have any conversation with Mr. Barlow relative to some small outside routes that you were security for yourself? If so, please state what the conversation was.

A. In the winter of 1874–'75, while looking after the interests of the Northwestern Stage Company, I was at the same time looking after the interests of my own and C. C. Huntley's in smaller routes. Mr. Barlow was very anxious that I should devote my entire time to the larger routes belonging to the Northwestern Stage
67 Company, and was very jealous of the little routes that I was picking up for myself and C. C. Huntley, and he told me not to bother with those small routes—to let them alone; that I could make more money out of the one or two large routes belonging to the Northwestern Stage Company than I could possibly make for myself out of all the little routes I could possibly pick up. Contrary to his advice, however, I continued to pick up those little routes, and to run them, and to manage them for the four years, clearing up at the end of that time about $40,000 for myself, and I suppose about the same amount for C. C. Huntley.

240 Q. After July 1, 1874, it appears from Mr. Parker's testimony that he was paid $25,000; state whether or not, in the settlement made with Barlow, in February, 1876, that $25,000 was included, and C. C. Huntley charged with your share of it?

A. Yes; it was included in that settlement of February, 1876; When Mr. Parker first demanded the $25,000, Mr. Barlow came to me to see whether we should submit, as he said, to this blackmail. We finally agreed to pay him this $25,000, which was made up of items against C. C. Huntley and Mr. Barlow for deficiencies or losses, or whatever they might be called, for the previous four years. Mr. Barlow and myself gave our notes (three, I think), amounting to $25,000. That was in the settlement making C. C. Huntley and myself debtor about $27,000 at the end of the first fifteen months, or at the February settlement.

241 Q. Exhibit S. S. H., No. 1, you have stated was signed by C. C. Huntley and other parties whose signatures appear upon it, in your room at the Arlington Hotel, and that C. C. Huntley either read it over or it was read over to him. State whether he understood the terms of it at the time, and whether he was in a condition to understand and comprehend it fully, or not.

A. I know that it was read to him and that he also read it over himself; and I thought, and have always thought, that he fully

understood the terms or the meaning of the writing; as I also know that Mr. Barlow understood it until after this suit was commenced, or about that time.

242 Q. State whether C. C. Huntley at that time made any claim that you had not paid him for the interest which that paper shows you had.

68 A. No, sir; he never had made any claim at that time, and never mentioned that I was indebted to him for that interest or for anything whatever; but at our first settlement, in February, 1876, he claimed that he had given me more than his indebtedness to me really amounted to—claiming that he only owed me about $45,000, and said that for the interest I had taken he had paid $75,000, and that I ought to pay to him the difference between $45,000 and $75,000. Mr. Wilson and Mr. Barlow were both present at the same time, and Mr. Wilson suggested or urged that I should then have a final understanding in regard to it, and I said: "It makes no difference to me; I will take this, as has been agreed upon, or, if you prefer, you can take the whole thing back, and pay me what I can prove and what we can agree upon as your indebtedness to me up to July 1, 1874." I did not pay particular attention then whether this interest cost $75,000 or $5,000; it was no matter of mine. When I took the interest I was looking not to the real worth of the stock, but to our anticipated profits. Our plans were to get a great deal more mail pay than we did; our plans being based upon the preceding four years. We expected to get that much as mail pay, but our contracts netted us about $125,000 a year less than they had the company the preceding four years, which had been a four years that should have netted at least $500,000 more mail pay than they did. Then, as our mail pay was cut down lower than we he had anticipated, I had the hardest work to reduce the expenses of the routes out there, but I succeeded in reducing them 15 or 20 per cent. over the preceding year. C. C. Huntley, Mr. Wilson, and Mr. Barlow were all under the impression, in February, 1876, that this interest I had acquired had really cost C. C. Huntley $75,000, and they labored under that mistake until I found the bill of sale, and figured out what it really did cost C. C. Huntley, which was only, as I said in the first part of my testimony, I believe, about $30,000—that is, the interest that I took out.

243 Q. From your testimony on cross-examination, it appears that you say "C. C. Huntley's physical condition in December, 1874, at the time of the execution of 'Exhibit S. S. H., No. 1,' was about the same as it is now." State, as clearly as you can, what his mental condition was in December, 1874, what it has been since his return from abroad, and what it is now.

69 A. I do not think it is much different now from what it was then. It has varied some, but I do not think it has very much during that time. Sometimes it is a little better, and sometimes not so good. I do not know that his physical condition is really strong, although it looks so. In regard to his mental condition, I judge, from the conduct of this suit and the memory he displays, that his memory is fully as good as mine. Anything that has

happened in connection with us both, from the time I went to Montana until now, which at the time both knew equally well, I think he knows as well as I do now, and I think that his mind is fully as clear on any subject that we knew at that time as mine is now, and he has refreshed my memory on hundreds of little points that I had myself forgotten. I do not think that he has forgotten any one item that is of any interest to him, from the time I went to Montana until the present time. I think probably he is a little cross, a little petulant, and I would not care to engage in business with him on that account; but, so far as his mind is concerned, while perhaps he is slow to think, yet I think he thinks well; and, while he is slow to talk, yet he talks well, if you can understand him. He never thinks anything out of the way and never talks anything out of the way, although he is difficult to understand. I do not think he is so quick to enter into any new combinations or details.

244 Q. But his recollection of old ones is complete and perfect, you think?

A. Just as complete as my own. What we both knew equally well at that time, he now knows as well as I do; and this is true in regard to anything that occurred from the time I went to Montana until now, and twelve years is a pretty long time to remember incidents.

245 Q. During the period from 1867 to July 1st, 1874, to which you have testified, you were asked, on cross-examination, as to your opportunities for drawing out of bank the moneys of C. C. Huntley, and you have stated substantially that you had the opportunity to draw any sums whatever, either in your own name or in the name of C. C. Huntley. Please state whether you ever did so for any purpose other than the prosecution of these things in which you were engaged, or for your personal expenses, as to which you have testified.

70 A. I always had the right to draw on C. C. Huntley's account, from the first time I went to Montana, wherever the bank account was, until 1874, for any amount I chose, for conducting the business or for my own personal benefit. It has always been a practice of my own to mark on each check the purpose for which it was drawn, and during that whole length of time I have never drawn for my own personal use, nor for any reason, from C. C. Huntley any large sum or any moderate sum of money, except for little incidentals, which my own checks will show. They are all small and not frequent. They will also show when they were drawn for the purposes of the company that it was marked on them for what purpose they were drawn, and I have most of the checks now to show for themselves.

246 Q. Are you willing to submit those checks if it is desired you should?

A. Yes; I will be glad to submit them.

247 Q. You have stated in July, 1878, you had about $40,000 as your share of the profits from mail contracts in which you and C. C. Huntley were jointly interested. Please state whether his share of the profits was the same, by whose exertions they were earned, and

whether C. C. Huntley contributed substantially anything to that result.

(Question objected to by Mr. Wilson, as immaterial.)

A. During that length of time, from 1874 to 1878, I made, through my own exertions, for myself about $40,000, and about a like amount for C. C. Huntley, which I have accounted for to him, or am willing to account for. This money was made from routes that I handled alone. That has nothing whatever to do with the Northwestern Stage Co.'s routes. I had the entire management, the securing of these contracts, the handling of them, the collecting of the pay, and payments of all bills and everything in connection with them. C. C. Huntley substantially contributed nothing. He did put up some certified checks for the securing of these contracts, but most of them were secured by putting up our joint notes, or any notes certified to by Bradley Barlow, who was cashier of a bank in Vermont; and during the last part of the contract term C. C. Huntley took from my control a few of these contracts that were in his own
71 name, and I kept account of the collections and payments the same as though they were still in my own hands.

Adjourned to 4 p. m. to-morrow, March 5, 1880, to meet at Mr. Mattingly's office.

FRIDAY, *March* 5, 1880.

Met pursuant to adjournment. Present: Mr. Mattingly for the complainant; Mr. Wilson for the defenandants.

Recross-examination of S. S. HUNTLEY by Mr. WILSON:

248 Cross-q. When you first went to Helena, where did you board?

A. At a hotel called the Western Hotel, I think.

249 Cross-q. How long did you board there?

A. Three or four months. While we were running stages on the Benton road I was in the office, and our office was in that hotel.

250 Cross-q. Did you pay any board at that hotel?

A. We paid no board at that hotel. It was furnished with our own furniture that we had got from furniture that came up on steamboats, and with that we furnished our own rooms. Then we commenced to carry horse-back mail, and while we were doing that I was living out in the field, camping out with the men all the time. After finishing that, we stocked the Missoula road, and commenced staging again, and then I went back to the hotel as formerly, and paid nothing for my board.

251 Cross-q. To whom did the proceeds of the tickets you speak of as being sold for the theatre belong?

A. They belonged to the theatrical troupe—the manager. Three-quarters went to the theatrical people and one-quarter to C. C. Huntley, and I was in the box office to see that they paid what they agreed to pay.

252 Cross-q. And the amount saved by you in the way you have described, you retained for yourself?

A. It properly belonged to me, and I used it in payment of my own expenses, or the expenses of C. C. Huntley & Co.

253 Cross-q. How did it belong to you?

A. Because if $1,200 worth of tickets were sold they agreed
72 to pay $300 for the use of the house. I gave to C. C. Huntley his $300 (all they agreed to pay him) and I gave them the $900 (all they expected), and kept the difference between those two sums and the amount of gold dust taken in for the tickets.

254 Cross-q. Who furnished the consideration described in the bill of sale to you, already offered in evidence yesterday?

A. C. C. Huntley gave me the money.

255 Cross-q. You spoke yesterday of your balance (business) with C. C. Huntley outside of the Northwestern Stage Co., and stated that he contributed nothing towards the conduct of the business, in which a large profit was realized. Did you not receive a considerable amount of his moneys, which were used generally in the business?

A. Yes, sir; I received money srom him.

256 Cross-q. About what amount?

A. About $30,000 in the aggregate from C. C. Huntley. When we commenced business in 1874 he had $11,000 to his credit, and I immediately paid out between $13,000 and $14,000 for C. C. Huntley's private account.

257 Cross Q. What was the nature of this expense?

A. This was for sub-contractors' pay that was due the previous quarter, ending June 30th, 1874, before C. C. Huntley's arrangement and mine commenced. These were old bills against C. C. Huntley, and he did not have money enough in the bank to pay them. Afterwards I raised about $14,000 from C. C. Huntley, which was placed to his credit, and immediately after, or about that time, I paid out bills for C. C. Huntley and bills of S. S. Huntley where we were running behind in our first contract during the contract term. So that during none of the time for the first eighteen months did we have any money to our credit in the bank, except the money borrowed from other parties on my own note.

258 Cross-q. Did you not, between the 28th July, 1874, and the 1st January, 1875, receive from C. C. Huntley in cash about $28,000?

A. I received about $28,000.

259 Cross-q. During that time does it appear from your books that you expended on his account more than $21,000 or $22,000?

A. I suppose his personal account shows $21,000 or $22,000; I have not figured it exactly.

73 260 Cross-q. That amount paid on account of the former contracts and for his personal account?

A. Yes, sir.

261 Cross-q. And the balance was used for the route?

A. Yes, sir.

262 Cross-q. State approximately what was the value of the stock that was transferred from the old contracts on the old routes belonging to yourself and C. C. Huntley's business, and used in the new contra cts from 1874 to 1878.

A. It was worth from $3,000 to $5,000. The stock itself, together

with hay and grain for several months, really stood C. C. Huntley in about $6,000. All these routes that he had previous to that time were routes that had been previously sublet, with the exception of the Northwestern Stage Company routes and the California and Oregon routes. All those little routes that I had been managing had been routes that had been sublet, except the Sweetwater route.

263 Cross-q. Do you mean to say that all the stock he owned on the 1st of July, 1874, which he contributed towards the contracts from 1874 to 1878, was worth no more than $3,000 to $5,000?

A. Yes, sir. All the routes that I managed from 1874 to 1878, not including the Northwestern Stage Co. or the California and Oregon Co., that C. C. Huntley furnished the stock for, was worth from $4,000 to $6,000.

264 Cross-q. What did that stock consist of?

A. Horses and stages.

265 Cross-q. How many horses did he own on the 1st July, 1874?

A. The stock that I bought on that Sweetwater route was thirty-seven head originally.

266 Cross-q. And how many stages?

A. About five or six.

267 Cross-q. That is all the stock and all the stages he owned himself?

A. Yes, sir; and they were in my name under that bill of sale.

268 Cross-q. He did not own anything except the Sweetwater route?

A. No, sir.

269 Cross-q. Was the physical and mental condition of C. C. Huntley in December, 1874, such as would, in your
74 opinion, justify any one in having important business relations and contracts with him, and in carrying on with him important negotiations in relation to his business affairs?

A. One would be justified in having negotiations and dealings with him, but it was not very pleasant on account of his being petulant and quick-tempered at times.

270 Cross-q. Do you think that at that time he was qualified to enter into any new contracts or business engagements?

A. I should not have wanted to enter into any business engagement with him myself, or into any partnership, on account of the difficulty of dealing with him—not so much as to his incapacity as to his being stubborn and cross at times.

271 Cross-q. Would you, as a relative, have been willing to permit a stranger to deal with him in respect of important business interests, as though he had been a healthy and sound man?

A. I would have been, because I could not have helped myself. He did deal for himself and bought real estate and houses, and traded for himself at times.

272 Cross-q. Would you have permitted it if you could have helped it?

A. I would not have permitted it if I could have helped it, because he was largely indebted to Mr. Barlow, and our contracts were

losing at that time, and so I would not have engaged in any more undertakings at that time; I did not think it was right for him to.

S. S. HUNTLEY.

Adjourned to meet by agreement or upon notice.

7.30 P. M., TUESDAY, *May* 11, 1880.

Met by agreement at the residence of Mr. Mattingly. Present: Mr. Mattingly, for the complainant; Mr. Wilson, for the defendants.

BRADLEY BARLOW having been duly sworn, testified as follows:

By Mr. MATTINGLY:

Q. You are one of the defendants in this cause?

A. Yes, sir.

75 Q. When did you purchase from C. C. Huntley a one-sixth interest in the Northwestern Stage Co.?

A. I cannot remember the date; it was a short time before the commencement of the contract term.

Q. A short time, then, prior to July 1, 1874?

A. Yes, sir.

Q. The contract term was for what period?

A. Four years from July 1, 1874, to July 1, 1878; I think that is the time.

Q. You purchased this one-sixth interest, then, as I understand, after the purchase by C. C. Huntley of two-sixths, and before the first July, 1874?

A. No. I think that the purchase was made at the time by Mr. Huntley and myself together; that is to say, Mr. Huntley began the negotiation with the understanding that I was to have a portion of the purchase.

Q. And did C. C. Huntley purchase these two-sixths from Parker for himself and you?

A. The exact facts about it were that Mr. Huntley was very desirous to get Parker out of the concern, and he said that he was determined to do so if he could, and wished me to join him. I told him that I did not want to join in any part of the California and Oregon route, but that I would take one-half of Parker's interest in the Northwest, and it was purchased with that understanding. He said I might take as much or as little of it as I had a mind to.

Q. And you took one-half of his purchase?

A. One-half of the purchase of the N. W., but I did not take any share of the C. and O.

Q. Did he assign or convey to you that one-sixth interest in the N. W.?

A. I am not aware that there were any papers made in regard to it. I do not remember whether there were or were not.

Q. Your best recollection is, then, as I understand it, that there were no formal papers?

A. My impression is that there were no formal papers. After the purchase was made we settled for it between ourselves in that way.

Q. In your answer in this cause you say: "At the time I made the said last-mentioned purchase" (referring to the one-sixth interest in the N. W.) "the said Charles C. Huntley informed me that
76 he was going to let the plaintiff have the other one-sixth interest which he had just purchased of the said Parker." Please state what he said relative to that.

A. He said very little, but said what indicated to me that he intended to let him have an equal interest with himself in the California and Oregon road and in the Northwest. I do not think he ever spoke on the subject but once, and then he said enough to indicate that, and no more. I never asked him any questions about it. He was rather reticent about it.

Q. From July 1, 1874, up to the close of the contract term, did S. S. Huntley take an active part in the management of the N. W. Stage Co.?

A. Yes, sir.

Q. Did you treat with him during that period as the owner of a one-sixth interest, or as a partner in the concern?

A. I understood that he owned a one-sixth interest in it; I never knew of any writing or any understanding in existence by which it was a recognized partnership with him. Mr. Huntley about — time failed in his health pretty much utterly, and the business was gotten along with the best way it could be, without having any knowledge of what the transaction was and how long they had fixed it up among themselves.

Q. I am not inquiring of you as to that, but whether during the four years from July 1, 1874, you did not consult with the plaintiff in this cause (S. S. Huntley), and treat with him during that whole period as though he was interested?

A. I did; I regarded him as interested in connection with his own interest and that of C. C. Huntley's.

Q. You consulted and advised with him in connection with the matters of the company?

A. Yes, sir; I did.

Cross-examination by Mr. WILSON:

Q. Do you know how the value of Parker's interest in the C. & O. and the N. W. Stage Cos. was estimated, and at what it was estimated?

A. My recollection about the purchase is that Parker received $75,000 for the whole; that we estimated the property of the
77 C. & O. road at $10,000, and the property on the N. W. at $40,000, and there was supposed to be about $25,000 on hand; it was a matter of estimate and guess-work, but was supposed that there would be about $25,000 of profits undivided at the end of the contract term. So that, as I figured it out, the share of one-fourth that Mr. Si Huntley had in the C. & O. and the one-sixth that he had in the N. W. came to $45,000. I never had any conversation with S. S. Huntley about it, and he was not there, but that was talked about by all of us in discussing the purchase, and it was upon that basis that Charley and I settled our part. Of course, we had to agree

upon some sum that should be estimated and paid for the C. & O. I only paid for the interest that was in the N. W., and, of course, Charley and I had to agree upon what we would call that and what we would call the C. & O.

Q. Was the full sum of $75,000 paid to Parker?

A. Yes.

Q. Were these undivided profits ever paid to C. C. Huntley?

A. They were never paid to anybody, except as they were paid out for expenses that accrued. We paid Mr. Parker $25,000.

Q. In addition to this interest?

A. What we paid him of itself exhausted what was supposed to be in the treasury. We bought bids of other parties, so that that $25,000 went for the benefit of the concern.

Q. S. S. Huntley was not here at the time the purchase was made of Parker, was he?

A. No, sir; I do not think he was in Washington at that time; I do not remember that he was.

Q. State, as nearly you can, what C. C. Huntley said about the disposition of the interest that he had purchased of Parker to S. S. Huntley.

A. It came up in this way: In the discussion between C. C. Huntley and myself in regard to the desirability of the two branches of the purchase (the C. & O. and the N. W.), Charley says: "We will buy it, and you may have just as much or just as little as you have a mind to; take just what you please—much or little; I am going to let Si have an amount of interest in it equal to my own."

Q. That was all that was ever said?

A. That was all that was ever said by anybody about it.

78 Q. When did you first hear from S. S. Huntley that he claimed to own one-sixth of the N. W. Stage Company?

A. I could not tell. I think as soon as the trade was made Charley started for California, and I do not know that we ever had any conversation about it afterwards. I got that knowledge, and I assumed in my own mind that that was correct, and we acted upon that theory. I guess I told Si what Charley had said to me about it, and we acted upon the theory that he was to be an equal owner with Charley in that service.

Q. The notes and the money that were paid to Parker were paid by you, were they not?

A. Yes, sir. I think one note was paid by C. C. Huntley, and the rest of them were all paid by me.

Q. And you charged him with his share of the purchase-money on your account?

A. I did; he settled with me for the purchase.

Q. Was S. S. Huntley the general manager of the Northwest Stage Company after July 1st, 1874?

A. I should think we did not have any general manager. We had a superintendent in Idaho, and Si's business in connection with Charley's matters, that I understood they were equally interested in (that is to say, routes of their own that they had), led him there, and he took such management as he pleased in regard to it. He was the

representative of one-third interest; that is, he represented his interest and Charley's. But I do not think there was ever any appointment of general manager; I do not recollect any.

Q. When did you first see C. C. Huntley after the purchase of Parker's interest, after he left the city?

A. I cannot tell how long it was. I haven't it in my mind what time I did see him after that. It was a good while, though.

Redirect examination by Mr. MATTINGLY:

Q. In the amount of $75,000, or in the estimate as to what Parker's interest in the C. and O. and in the N. W. Stage Cos. was worth, I understood you to say it was estimated at about $25,000 of undivided profits that would be on hand at the end of the contract term. By "contract term," do you mean the previous term, ending June 30th, 1874?

79 A. Certainly.

Q. You, C. C. Huntley, Parker, and Smith had been running these two routes prior to July, 1874.

A. Smith was interested in the N. W., but not in the C. and O. Sanderson, Parker, Huntley, and myself each owned one-fourth, and it was sort of a concurrent opinion between Charley, myself, and Mr. Parker, that there were about $25,000 undivided profits in my hands, and about $5,000 of it belonged to the C. and O., and the balance to the N. W.

Q. In that, of course, S. S. Huntley had no interest?

A. No, sir; that is, he had none unless he had it of Charley.

Q. He had none prior to July 1, 1874?

A. None that I ever heard of, or ever heard claimed.

Q. You say that afterwards you paid $25,000 to Parker?

A. Yes, sir.

Q. You had a settlement, had you not, with S. S. Huntley and C. C. Huntley in February, 1876, for the first fifteen months of the contract term beginning July, 1874?

A. Yes, sir.

Q. Did you not charge up to them in that settlement the $25,000 paid to Parker?

A. Yes, sir; I did.

Q. In that settlement was not a certain salary allowed to S. S. Huntley as general manager of the N. W. Stage Co., and charged up by you in your account?

A. There was a certain sum that was allowed for expenses, and I do not know but it was his salary. His account for quite a large sum was allowed and settled.

Q. Whatever it was, it was charged up by you to both S. S. and C. C. Huntley, was it not?

A. It was charged in the account.

Q. It went as a credit to them to the extent of one-third, did it not?

A. Yes, sir; it went to the credit of both.

Q. How was the $25,000 paid to Parker?

A. At the time that he made the demand he rendered an account and summoned up a good many things.

Q. I mean whether it was paid in money or in notes?

A. I think there were two notes given.

Q. Whose notes were they?

80 A. I think those notes were signed by myself and Smith, and I should think by one or both of the Huntleys. I presume I could hunt it up if it was considered important.

Q. Were they not solely the notes of yourself and S. S. Huntley?

A. I should think not. I think I have those notes in my possession. I should think they were signed by Smith and myself, and my impression would be that both of the Huntleys names were signed by somebody, but I am not very certain about it; it has been a good while ago. I think I saw those notes the other day; if I find I am mistaken I will show them to you and correct it.

Recross-examination by Mr. WILSON:

Q. You say that S. S. Huntley had no interest in the C. and O. route prior to the purchase from Parker. Had he, or did he claim to have, any interest in the N. W. Stage Co. prior to that time?

A. I never heard that he did.

Q. You do not mean to say that the $25,000 was charged up to C. C. Huntley and S. S. Huntley alone?

A. No; it was charged to the account against all the parties.

Q. At the time of the settlement of which you have spoken, did not S. S. Huntley present a bill for disbursements made by him?

A. He did.

Q. Do you remember the aggregate of that bill?

A. It was something over $9,000, I think.

BRADLEY BARLOW.

DISTRICT OF COLUMBIA, } ss:
County of Washington, }

I, A. Johns, examiner in chancery, do certify that the foregoing depositions were taken down by me and reduced to writing in the presence and from the statements of the witnesses (who had been by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause), and were read over by the witnesses, respectively, and subscribed by them.

I further certify that I am not of counsel for either of the parties, nor in any manner interested in the event of said cause.

A. JOHNS,
Examiner in Chancery.

Fee, $60.25; paid. A. JOHNS.

81 EXHIBIT S. S. H., No. 1

Know all men by these presents, that whereas Bradley Barlow is the owner of one-half of the stock, property, and effects of what was known as the Northwest Stage Company, and S. S. and C. C. Huntley are the owners of one-third of said property, and Adam E. Smith

is the owner of one-sixth of said property, and each of the said parties share respectively in the above proportions in all the mail routes lately operated by said company, and are to share in the future on all those routes in the above proportions in the ownership, profits, losses, and expenses appertaining thereto or incident to the obtaining said mail routes, and it is agreed between us that the said Barlow shall have full power and authority to collect the pay on said routes during the present contract term, for the benefit of the said parties herein named, in the proportions to each party hereinbefore stated, and that full powers of attorney in all cases shall be made and delivered to the said Barlow to collect all mail pay on all routes now owned or hereinafter acquired by the aforesaid parties, or either of them, in the territory embraced by the service of the late Northwest Stage Company.

In witness whereof, we have hereunto set our hands and seals, this 22d day of December, A. D. 1874.

BRADLEY BARLOW. [SEAL.]
C. C. HUNTLEY. [SEAL.]
S. S. HUNTLEY. [SEAL.]
ADAM E. SMITH. [SEAL.]

In presence of—
J. L. SANDERSON.

EXHIBIT S. S. H., No. 2.

Whereas S. S. Huntley, in his own right, and as attorney-in-fact for C. C. Huntley, having sold and assigned to me all the right, title, and interest which they, the said S. S. Huntley and C. C. Huntley, held and owned in the partnership of Barlow, Sanderson and Company, doing business as the California and Oregon Stage Company, and in all the property of said partnership, I hereby agree to, and do, absolve and discharge the said S. S. Huntley and the said
82 C. C. Huntley of and from all obligations and indebtedness of every kind whatever that now exist, or may hereafter exist with respect to the business of said partnership and company, as well as those heretofore incurred.

In witness whereof, I have hereunto set my hand and affixed my seal, this first day ——, A. D. 1876.

April 1, 1876. J. L. SANDERSON.

EXHIBIT S. S. H., No. 3.

Received, Washington, D. C., February 1, 1876, of C. C. and S. S. Huntley their joint notes, amounting to twenty-seven thousand seven hundred and fifty-eight dollars and five cents, viz., $10,000, $10,000, $7,758.05, same being settlement for dividends and deficiencies, and their share of loss incurred in operating Northwestern Stage Company and California and Oregon Stage Company, from July 1, 1874, to September 30, 1875.

$27,758.05. BRADLEY BARLOW.

EXHIBIT S. S. H., No. 4.

Received of S. S. Huntley and C. C. Huntley twenty thousand dollars ($20,000), in part payment of the indebtedness due me from S. S. and C. C. Huntley, and to be credited on the notes held by me.

Washington, D. C., April 1, 1876.

BRADLEY BARLOW.

EXHIBIT S. S. H., No. 5.

JUNE 1, 1878.

DEAR HUNTLEY: I inclose copies of telegrams to inform parties about N. W. Stage stock. Please advise me what to do with your and C. C. Huntley's interest. I want to close mine out.

In haste, your truly, BARLOW.

P. S.—I sent copies to C. C. Huntley. Did not know that you were in Wash'n until I read a letter from Brown.

83 EXHIBIT S. S. H., No. 6.

No. 1.—Copy of telegram:

SALT LAKE, UTAH, *May* 5, 1878.

BRADLEY BARLOW: What is your lowest figures and terms for stock and fixtures on Kelton and Winnemucca roads? Must decide soon.

(Signed) M. SALISBURY.

No. 2.—Copy of telegram:

ST. ALBANS, *May* 14, 1878.

M. SALISBURY, *Salt Lake, Utah:*

Will sell all stage property on Kelton and Winnemucca roads, including stock and stations, excepting Boise workshops, supplies, and material, and hay and grain on both roads, for sixty thousand dollars, on time, properly secured.

If Huntleys dissent will sell my two-thirds at proportionate price, deliverable July 1.

(Signed) BRADLEY BARLOW.

No. 3.—Copy of telegram:

SALT LAKE, UTAH, *May* 14, 1878.

BRADLEY BARLOW: Price too high for property described in your despatch. Shall we make you offer? If so, what time and security will satisfy you? Answer promptly.

(Signed) M. SALISBURY.

No. 4.—Copy of telegram:

ST. ALBANS, *May* 14, 1878.

M. SALISBURY, *Salt Lake, Utah:*

You can make offer. Time satisfactory to you. Security satisfactory to me. Morris authorized to trade.

(Signed) BRADLEY BARLOW.

No. 5.—Copy of telegram:

BOISE CITY, IDAHO, *May* 21, 1878.

BRADLEY BARLOW: Have you my letter addressed to Washington eight? Important. Shall I close on basis of your telegrams fourteen, excluding shops and Idaho route?

(Signed) WM. B. MORRIS.

84 No. 6.—Copy of telegram:

BOISE CITY, IDAHO, *May* 22, 1878.

BRADLEY BARLOW: I have authority from Salisbury to close trade with you, in accordance with your telegrams of fourteenth and sixteenth, if you will include all property belonging to the Northwestern Stage Company except hay and grain. Answer.

(Signed) JOHN HAILEY.

No. 6:

BOISE CITY, IDAHO, *May* 24, 1878.

BRADLEY BARLOW, *St. Albans, Vt.:*

Have closed at your offer, and reserve Idaho road, stock, shops, and contents—hay and grain.

(Signed) WM. B. MORRIS.

No. 7.—Copy of telegram:

ST. ALBANS, *May* 25, 1878.

WM. B. MORRIS, *Boise City, Idaho:*

Your letter, May 8, received; answered, inclosing telegrams from and to Salisbury. Hailey's telegram twenty-second, yours twenty-first and twenty-fourth, received yesterday.

All right to close trade at sixty thousand dollars on basis of my telegrams fourteenth and sixteenth and your letter May eighth, with security satisfactory to me, sure.

(Signed) BRADLEY BARLOW.

EXHIBIT S. S. H., No. 7.

ST. ALBANS, VT., *March* 31, 1878.

Friend HUNTLEY.

DEAR SIR: Yours of the 26th February (I suppose you meant 26th March) is received.

You are entirely mistaken in what you say about the $20,000, as you will find upon examination.

I shall neither do you, nor shall I attempt to do you, any injustice, and I do not think that I have ever shown any disposition to.

At one time you and your brother were indebted to me about ($90,000) ninety thousand dollars, and that amount and the interest on it has not yet been fully paid to me.

85 You know that it is impossible for me to cheat you, even if I had such an intent; but in view of what has been attempted by Mr. J. H. Gilbert, I do not deem it prudent to pay out money faster than it comes into my hands. I have ever shown every dis-

position to guard your interests, and hope to be able to take proper care of both yours and C. C. Huntley's.

I will endeavor to have my accounts in such shape when I again meet you in Washington that you can see just how matters stand between us.

Yours truly, BRADLEY BARLOW.

P. S.—I suppose the stock and property of the N. W. Stage Co. will have to be disposed of July 1. Please consider the matter so as to be able to advise what is best to do with it. I have instructed Mr. Morris to have a correct inventory made of all of it, with the values set upon it at what it is deemed to be worth, and I think that it had better be sold and the proceeds divided. What do you think about it?

EXHIBIT S. S. H., No. —.

Know all men by these presents, that I, William Benham, of Sweetwater county, Territory of Wyoming, the party of the first part, for and in consideration of the sum of twelve thousand dollars, lawful money of the United States of America, to me in hand paid by S. S. Huntley, of Helena, Montana Territory, the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, unto the said party of the second part, his executors, administrators, and assigns, all of our interest (it being full and complete) in that property known as the Sweetwater Stage and Express Line, running between Bryan and South Pass City, and carrying the United States mails, together with all the appurtenances thereto, consisting of horses, coaches, harness, grain, hay, and all stations on the road built and occupied by the party of the first part, and all office furniture and stationery as per inventory attached hereto, to have and to hold the same to the said party of the second part, his executors, administrators, and assigns, forever.

And I do, for his heirs, executors, and administrators,
86 covenant and agree to and with the said party of the second part, his executors, administrators, and assigns, to warrant and defend the sale of the said property, goods, and chattels hereby made unto the said party of the second part, his executors, administrators, and assigns, against all and every person and persons whomsoever lawfully claiming or to claim the same.

In witness whereof, I have hereunto set my hand and seal this twentieth day of January, in the year of our Lord one thousand eight hundred and seventy-one.

WM. BENHAM.

Signed, sealed, and delivered in the presence of—
L. D. BEASY.
W. A. KELLY.

Testimony for Defense.

In the Supreme Court of the District of Columbia.

SILAS S. HUNTLEY
vs.
CHARLES C. HUNTLEY and BRADLEY BARLOW and ADAM E. SMITH. } Equity. No. 6558.

Depositions of Lucius Bowen Church, Thomas S. Huntley, C. C. Huntley, and Nath'l Wilson, witnesses for the defense in the above cause, taken by consent before me, Bartram Zevely, United States commissioner and examiner in chancery, at the office of Nathaniel Wilson, No. 635 F street, Washington, D. C. Begun March 11th, 1880, at 4.30 o'clock p. m., and continued July 13th, 1880, July 15th, 1880, September 20th, 1880, October 22–29 and November 3, 1880, and March 12, '81.

Present: William F. Mattingly, solicitor for complainant; Nathaniel Wilson and J. Hubley Ashton, solicitors for defendants.

THURSDAY, *March 11th*, 1880—4.30 p. m.

Mr. L. B. CHURCH, being first duly sworn, deposes and says:

Lucius Bowen Church is my full name; am forty-seven years of age; I reside at Turner Junction, Illinois.

Q. Are you acquainted with the parties to this suit?

A. Yes, sir.

87 Q. How long have you known them?

A. I have known C. C. Huntley since he was a child; I should think thirty odd years or upwards; have known S. S. Huntley since spring of 1870.

Q. State under what circumstances you became acquainted with S. S. Huntley.

A. Well, I met him first at Helena, Montana, in spring of 1870. I was sent out there as assessor of internal revenue for the Government for the district of Montana—embracing the Territory—headquarters at Helena.

Q. Did you find him there when you got there?

A. Yes, sir.

Q. State what knowledge the duties of your office required you to have of the business of C. C. and S. S. Huntley, after you received your appointment.

A. Well, we used to have two or more assistant assessors for that division, embracing Helena and Lewis and Clark counties; used to get their account of the gross receipts of their business out of their office, which, of course, led me [to] know something of their business. At that time the Government was taxing 2½ per cent. on the gross receipts of all corporations and business.

Q. When you first went to Helena in what occupation was Silas S. Huntley engaged, and what were his duties, as far as you know?

A. He was working for C. C. Huntley, as I understood; had charge of his business there; running the office—the stage office there, where they received package express to go over their line,

and handled the mail from the posts right near by. He had charge of and the superintendence of the line.

Q. In whose name was the business conducted?

A. So far as I know, in C. C. Huntley's name.

Q. Did you ever know, either individually or officially, of S. S. Huntley's having any interest in it?

A. No; his name never appeared, to my recollection, in the partnership in any way.

Q. How long did you continue to be United States assessor and to reside at Helena?

A. I was there from the 1st of April, 1870, till June, 1873, when we were all mustered out. I think the law took effect on June 1, 1873.

88 Q. After you went to Helena, in 1870, what knowledge had you of the occupation of S. S. Huntley, and how intimately were you acquainted with him—how frequently did you see him?

A. We were together every day or so when he was there at Helena. Sometimes he was off at the other end of the route, at Deer Lode, or Missoula, and then he was back at Helena, making that his headquarters.

Q. Did you know his general style of living and dressing during that period?

A. Well, he was always a good liver.

Q. How did he dress?

A. He always dressed well.

Q. Where did he board?

A. I think he boarded at—let's see—it was at the—I forget what they call the hotel—the large brick hotel Germain kept. There was another house where he boarded some. I don't remember the name.

Q. Did he keep horses and buggies?

A. Oh, yes.

Q. What was the cost of living at that time in Helena per annum for a single man upon a somewhat liberal scale?

A. It was expensive living in Montana in 1870; took all of my salary to live—myself and wife—and that was $3,000 a year. Rent there was very high, very expensive. We had to pay $40 and $50 a month for a little bit of a board shanty to live in; $50 a month for a woman servant. A young man's expenses were accordingly.

Q. You came away in 1873?

A. I came away in spring of 1873; came a little while before my time. I think I came the last of May, in order to come here to Washington and fix up some business that was to be done. I had received my orders to settle up my business.

Q. Did you see C. C. Huntley in the summer of 1874; if so, when and where?

A. I saw him in 1874 before he was sick and after he was stricken with paralysis. I met him here just before he went over to New York. That was in the summer, or just after Congress had adjourned—some time in June. Then he went over to New York,

and then I saw him on his way to California, at Chicago;
89 met him in the Grand Pacific Hotel. He had then recovered from his first attack in New York. He went on West.

Q. You say he had recovered from his first attack in New York?

A. He was all right, except that he looked as though he had been sick; talked straight; walked straight. I was visiting with his father, and advised him not to go West, but he said he must go to Salt Lake, and then he went on to California. There was where he was stricken down.

Q. When did you see him next?

A. Saw him next when he was on his way from California. Si was bringing him to New York. I went aboard the cars near Chicago at my home, and saw him.

Q. What was his condition then?

A. Well, he did not know much of anything then. He recognized me in a sort of blind way. His sister, who resided there, went on board of the cars with me. He seemed to recognize her, but he did not know much of anything. He could not talk.

Q. That was when?

A. That was in 1874, I think; if I am not mistaken, in the month of August. It seems to me as though it was August, 1874.

Q. When did you see him next?

A. I saw him in New York directly after—probably not more than two or three weeks—somewhere around there. I came on here, and Si went to New York with me. I went over there to see him.

Q. Just before he sailed for Europe?

A. Just before he sailed for Europe. He was then making preparations to sail for Europe. That was what I gained from Si.

Q. Si told you he was going to Europe?

A. I think he did.

Q. What was his condition at that time?

A. Well, he was very bad. At times he seemed to understand some things, and at times he was bewildered about everything. I dropped on a good deal of his mistakes riding out with him. He pointed out buildings as being in San Francisco. I told him he was in New York, and not in San Francisco. His father was with us. Going down Fifth avenue, he pointed out some San Francisco buildings. I thought his mind then very weak.

90 Q. Did you have any business transactions with him at that time?

A. I did have, but I did no business him. I wanted to, but did not.

Q. Did you know to whom the management of his business was committed?

A. No, sir; any more than as I understood Si was to take care of his business.

Q. Whom did you understand that from?

A. His father; don't think Si said anything about it. If he did, it was in a sort of a general way.

Q. Do you know how the business was actually done—whether there was any occasion for Chas. C. Huntley's signing papers?

A. When I was there they were there doing business with him. It was in Charley's room. They seemed to be fixing up papers.

Q. Did you see any papers signed

A. I did.

Q. Do you know what they were?

A. I do not.

Q. Were they filled up?

A. They seemed to be blank papers.

Q. Could you tell from their looks what they were?

A. I don't believe I could. They were merely sitting around a table with him. Huntley was there.

Q. How were they signed—without reading or explaining them to him.

A. He signed them just as he always did; just laid them before him, and did not ask any questions; was told to sign, and he did; seen it done before.

Q. How many papers were there signed?

A. I don't know how many.

Q. Were you a bidder on the routes obtained by C. C. Huntley or S. S. Huntley for the term of four years from 1874 to 1878?

A. Yes, sir.

Q. At whose request did you become a bidder, and for whose benefit?

A. C. C. Huntley's.

Q. Were you informed by S. S. Huntley or C. C. Huntley that S. S. Huntley had any interest in those bids on those routes?

A. No, sir.

91 Cross-examination by Mr. MATTINGLY:

Q. I believe you are temporarily in this city?

A. Yes, sir.

Q. How long have you been here?

A. Been here, let's see; it will be two weeks Saturday that I arrived here; I think two weeks Saturday.

Q. Last Saturday or next Saturday?

A. Next Saturday coming.

Q. Then you have been here about twelve days?

A. Yes.

Q. Where have you been stopping in this city?

A. Been stopping with C. C. Huntley, except the first day or two I stopped at the hotel.

Q. You have been at C. C. Huntley's house as a guest by his invitation?

A. Yes, sir.

Q. Are any members of your family with you?

A. Yes, sir.

Q. Has C. C. Huntley been showing you around the city?

A. No, sir.

Q. Have you been talking over the matters involved in this litigation?

A. Yes; there has been some conversation about it.

Q. Have you not talked with him about it almost daily?

A. Well, I do not know, but the subject has come up almost every day; do not know as it has. It has been referred to several times to me at the house by some of the members of the family.

Q. Were you in Helena continuously from 1870 to 1873?

A. Was away sometimes; sometimes two months at a time. I think there were two winters I was on here, and away from there about two months at a time I guess.

Q. About how much of the time were you absent from there?

A. Well, I presume I was absent, I might say, during three years four months. Don't know as it was so.

Q. During the period from 1870 to 1873 you were in Helena did you see C. C. Huntley there?

A. Yes, sir.

Q. When?

92 A. He would come and go from Washington out there and then back home; don't remember just how many times. We went together when we went out.

Q. You went out together in 1870?

A. Yes, sir; during 1870 traveled in company together.

Q. How long would he remain when he went out there?

A. I don't just remember. He was there some little time.

Q. What do you mean by "some little time"?

A. He might have been there a month and he might have been there two months or longer; don't remember.

Q. Can you say positively from any time from 1870 to 1873 he was out there longer than two weeks?

A. Yes, sir. He was there more than two weeks at that time.

Q. At which time are you speaking of?

A. In the spring of 1870.

Q. I refer to after 1870, when he first went out. Do you remember, and can you state now positively, whether he was there at all on any other occasion than when you went out in 1870; between 1870 and 1873?

A. Yes, sir; he was there at another time.

Q. At what season of the year?

A. I remember one time distinctly. It was when Governor Potts went out to take possession as Governor of the Territory; C. C. Huntley was there then; forget what time of year or what year that was; in 1872, I think; am not positive.

Q. Can you state how long he remained on that occasion?

A. No, sir; really cannot state.

Q. Did C. C. Huntley, on the occasion of his visits there, ever attend to the business of the office that you know of?

A. I don't know how much business he did in the office when he was there. He seemed to be overseeing his business, looking it up.

Q. He would naturally be in the office, I suppose, if he was out there?

A. He was around the office.

Q. Do you know of his ever buying any supplies for the road?

A. I don't know about that.

93 Q. Do you know of his ever hiring or discharging any of the employees?

A. No.

Q. Do you know of his paying any bills for the road?

A. Only from general information, for I was not interested enough in his business at that time to see who paid the bills. I only know that the bills were paid in C. C. Huntley's name.

Q. Did you know of C. C. Huntley's paying any such bills?

A. I cannot swear to any particular bill.

Q. Did not S. S. Huntley have general charge and control of the business?

A. Yes; he was superintendent, as I understood, of the lines?

Q. Whom did you understand that from; or was it a mere surmise of your own?

A. I see it every day.

Q. Now, please tell me what internal revenue taxes on incorporations had to do with the business of C. C. Huntley or S. S. Huntley?

A. For the gross receipts of their office—the gross receipts of the business; under the law at that time we were required to collect 2½ per cent. from all corporations.

Q. Were S. S. or C. C. Huntley a company?

A. They were a company; don't know that they were an incorporated company, but, if they were not, we had to go into their office and look at their books and see what their gross receipts were, the same as with mining companies.

Q. What was the name in which this business was carried on?

A. C. C. Huntley.

Q. What did you call it then?

A. We called them a company; it was C. C. Huntley's stage line, as I understood it.

Q. Did you ever examine the books personally to find out what the gross receipts were?

A. No; my assistant assessor did that; I know the accounts which used to come into the office.

Q. Then returns of the gross receipts of this business of Huntley's were made to you by your assistants?

A. Yes, sir.

94 Q. Was the tax of 2½ per cent. paid on this business that S. S. Huntley was conducting for him?

A. I think the assistant assessor was required to call on them for their gross receipts; I had instructions from the Department in Washington as to those companies, particularly Gilmer & Salisbury. What the amounts were collected, I don't remember; I had an order to look up the matter.

Q. Did you, as an assessor for that district, levy or assess the tax of 2½ per cent. on their roads?

A. Yes, sir.

Q. Are you positive of that?

A. I think the lists will show; they may not have given in anything.

Q. Whatever the gross receipts were that were reported by your assessors from the business of S. S. Huntley was turned over to you. Now, what I want to know, is whether you, as assessor of internal revenue for that district, ever levied or assessed the tax of 2½ per cent. on those receipts?

A. I am not positive whether there were any gross receipts returned from C. C. Huntley or not; that is, I know there was from Gilmer & Salisbury, on $70,000; they might have returned theirs blank.

Q. Then, if they might have returned their gross receipts blank, or not, or if you did not know that your assessors made any return as to the gross receipts of that business which was being conducted by S. S. Huntley at that time, how is it that you state that your knowledge of the business was acquired from the gross receipts of it returned to you by your assessors?

A. I was not required to know; my assistant assessor was required to know, and I instructed him to look the matter up; the question was discussed at that time, and what the amount was collected I don't remember.

Q. But you have just stated that, for all that you know, the amount may have been blank, and that you don't know that your assistant returned any amount of gross receipts from the office of Huntley?

A. Well, I don't remember, indeed, what it may have been.

Q. You have stated, on your direct examination, that your knowledge of the business carried on by S. S. Huntley at that time
95 in the name of C. C. Huntley was acquired from the returns of gross receipts of the business made to you by your assistants.

A. Yes, sir.

Q. You state that?

A. I stand to that.

Q. Yet you state, in answer to questions put to you by me, that, for all that you know, the returns may have been nothing at all—may have been in blank, and that you don't know now, and cannot say, whether any returns were made?

A. I beg to be corrected; I claim that their returns were made some months there; other months their returns may have come in blank.

Q. Have you any very positive recollection about any one or the other?

A. I am positive of that.

Q. Are you not mixing up Huntley with Gilmer & Salisbury?

A. No, sir.

Q. Can you state what the gross receipts were?

A. No, sir.

Q. Do you know that any gross receipts at all were returned?

A. Yes, sir.

Q. How frequently?

A. That I cannot tell; I trusted to my assistant assessor after I gave him the order.

Q. Did you ever examine the books yourself?

A. Not their books.

Q. Did you ever collect any tax from them?

A. No, sir; it was not my business. My duties were an assessor's not collector.

Q. Did you ever assess any tax upon them?

A. Yes, sir; the assistant took their returns; I did not.

Q. Was S. S. Huntley running stages for the carriage of passengers?

A. Not that I know of.

Q. What stage line was it that you have been speaking of?

A. C. C. Huntley's.

Q. By S. S. Huntley I mean that he was the managing man, was he not?

A. I understood that he was superintendent.

96 Q. Was he then in the name of S. S. Huntley, as superintendent, running stages for the carriage of passengers?

A. As stated before, I did not see S. S. Huntley's name appear as running any stage line.

Q. Was anybody by the name of Huntley running stages there for the carriage of passengers?

A. C. C. Huntley was running one.

Q. Then I understand you that C. C. Huntley was running a stage line for the carriage of passengers, but under the superintendence and management of S. S. Huntley?

A. Yes, sir; that is the way it looked to me.

Q. Were they doing much business in that line?

A. They seemed to be doing a good business on the Deer Lodge route in the spring of 1870.

Q. Stages brought the passengers to this hotel, kept by Germain, which you have spoken of?

A. Yes, sir; they stopped there with the passengers mostly.

[Q.] Do you know whether in point of fact that S. S. Huntley ever paid, or was required to pay anything for his board at that hotel.

A. No.

Q. You do not?

A. Don't know what arrangement was had at all.

Q. Did you not know that in point of fact he was not required to pay any board, but had his board free?

A. No, I did not know that.

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Cross-examination continued:

Q. Did S. S. Huntley sleep at this hotel in Helena that you have spoken of?

A. I really don't know. I don't remember as to that. He might have slept there sometimes and at other times had a room; don't know; could not swear as to that.

Q. Do you know at all of his having a room in the hotel?

A. No, sir; I do not.

Q. Don't you know that a portion of the time he slept in the office?

A. Well, I think he did a good deal of the time. I think he had a back room in the office, or in the back part of the office. I
97 remember being in there with him in the office and out again. I think he did a portion of the time.

Q. Was it not customary in that country, Mr. Church, for the proprietor or superintendent of the stage lines, to your knowledge, to get their meals free at the hotels?

A. Well, I don't know but it was. I guess it was mutual all around. The hotel men rode free, and I guess they gave the boys free meals and the like of that. I think a good deal of that was the case.

Q. So far as your observation extended, was S. S. Huntley attentive to business and a hard worker?

A. Yes; he seemed to be diligent; seemed to be attentive to business.

Q. Now, these horses and buggies that you have spoken of, did they not belong to the line?

A. My impression was that they belonged to C. C. Huntley.

Q. What I mean is belonging to the line—were used in connection with the business?

A. Perhaps they were; I don't know. I used to use some of them sometimes. Both C. C. and S. S. Huntley told me to go to the stable and use a horse and buggy when I liked. I did so.

Q. Now, as to S. S. Huntley's habits. Living was expensive in Montana at that time—did he use tobacco?

A. I don't think he did; I don't remember that he did. I don't remember of ever seeing him use much tobacco.

Q. Did you ever see him use any tobacco at all?

A. I don't think I did.

Q. Did he drink?

A. Well, he was not a drunkard by any means. He used to take a social drink occasionally. He was not a hard drinker of whiskey. He may have taken beer and lemonade, but was not inclined to whiskey.

Q. Did you ever see him drink whiskey?

A. I cannot swear that I did.

Q. Now, you have spoken of two mail contracts, bids for which you put in at the instance of C. C. Huntley, and the contracts were let to you on those bids. What was the amount of annual mail pay on those contracts?

A. I just don't remember the annual amount. They were not very heavy contracts.

Q. Were not each of them under $2,000 a year?

98 A. The original bid might have been that, under $2,000, on the Washington Territory service, but not in Montana.

Q. What is your recollection as to Montana?

A. In the Montana service, in the two or three contracts, if my

memory serves me right, the original bids were some thirteen or fourteen thousand dollars.

Q. I am speaking of those two contracts which you got.

A. There was two contracts in Washington Ty. or Oregon; don't know but that it was in Oregon. I furnished the bond for C. C. Huntley.

Q. And those were the only two contracts that you obtained, as I understand?

A. Those were the mail contracts awarded to me; but I don't know what you mean by obtained.

Q. Those were the only two contracts that were let to you by the Post Office Department under the original bids and run?

A. I guess that's so.

Q. But those two?

A. But two; I don't know how they managed them.

Q. And was the annual mail pay on each of these two routes under $2,000?

A. That I could not say. They were not very heavy contracts, I remember; but just the amount I don't remember what they were.

Q. You had nothing to do with the running of those routes?

A. No, sir.

Q. Did you not subsequently execute powers of attorney to S. S. Huntley to control those contracts?

A. I believe I did.

Q. You did so at his request, did you not?

A. I think it was at his request. I don't just remember whether the power of attorney was given to him or Charley before his sickness; but my impression is that is was given to S. S. Huntley; I may be mistaken.

(Here witness was handed a power of attorney and asked to state, after looking at it, if his recollection was refreshed.)

A. That is my signature. That is Si's writing. Yes, sir; Si's filing up and my signature.

Q. The two powers of attorney were filled up in S. S. Huntley's handwriting and signed by you?

A. Yes, sir.

99 Q. Now, can you answer whether you did not execute those powers of attorney to enable S. S. Huntley to control these contracts at his request?

A. Well, it must be that I gave the power of attorney to S. S. Huntley.

Q. Well, was it not at his request?

A. I think it was.

Q. These were small routes, were they not?

A. I understood that they were; I never saw them.

Q. Do you know of a Mr. Morse putting in some bids for C. C. Huntley at his request?

A. Yes, sir; I think I know something about it; remember something about it.

Q. Did not Mr. Morse, upon application made to him to execute powers of attorney similar to those you did, decline to do so?

A. Well, I heard some talk about it; I was connected with him; he was the general passenger agent; heard some talk about it, but what the conversation was I don't remember.

Q. Don't you know that S. S. Huntley had to pay him a considerable amount of money in order to obtain those contracts?

A. I understood from what Morse told me just what money he received; I understood from Si that he had to pay him some.

Q. And you understood from Morse that they paid some amount?

A. I don't think he told me.

Q. At the time, did you hear of the amount?

A. Could not swear to the amount.

Q. Did you hear or do you remember the amount S. S. Huntley had to pay him?

A. What I knew about it was really hearsay; I did not see it.

Q. You don't answer my question yet; I ask you, and want you to answer, whether at that time you did not know the amount that S. S. Huntley had to pay to Morse in order to obtain those contracts?

A. I heard he had to pay him $2,000; whether it was so or not I don't know.

Q. You have spoken of some papers that C. C. Huntley ex-
100 ecuted in a room in a hotel in New York city just prior to his departure for Europe; do you remember what hotel that was?

A. It was the Sturtevant House.

Q. Who was present at the time?

A. Well, Thos. S. Huntley, the father of C. C. Huntley, was there at the time, in and out of the room; we were all together.

Q. C. C. Huntley's father, S. S. Huntley, yourself, and C. C. Huntley, of course; anybody else?

A. I don't remember of anybody else.

Q. Was Barlow there?

A. Barlow was at the hotel, but don't remember of his being in the room; I saw and talked with him in the office.

Q. Was there any secrecy about the matter, or effort at concealment, or anything of that kind?

A. No, sir; do not remember it.

Q. You had no idea what those papers were?

A. No.

Q. Did I understand that you were here in June, 1874?

A. Well, it was in the spring, but just the month—May or June—I am unable to say; I was sent here to see Huntley, but just before he went to New York, or he may have been over to New York, or returned from there, as he was in the habit of doing; I saw him at the Arlington Hotel, and he told me he was going West, just before he was taken sick.

Q. You were sent on here?

A. Yes.

Q. By whom were you sent?

A. By Mr. Morse.

Q. Who paid your expenses?
A. I paid my own expenses.
Q. Was it on that occasion that you went to New York with S. S. Huntley?
A. No, sir.
Q. That was afterwards?
A. It was before.
Q. Before you went on?
A. Before I went over with Si—some time.
Q. Was it on that same visit?
A. No, sir; it was prior to that visit; this was prior to the
101 time I went from here to New York to see Charley before he went to Europe; it was in the spring months, I think—May or June; I think Congress had just about adjourned.
Q. Do you remember what month it was that you went on with Si to New York?
A. Well, it must have been in August or September; it was immediately after Charley had come on from California—two or three weeks after that. It may have been the 1st of September or in October, I have forgotten just what month.
Q. Did you see Charley sail?
A. No, sir.
Q. Did you know when he did sail?
A. No, sir.
Q. Were you there in New York when he did sail?
A. No, sir.
Q. Do you know how long he was abroad?
A. Don't remember just how long.
Q. About how long?
A. I think he was gone a year, or maybe not so long as that may have been only six or seven months. Know Mr. Gilbert, who went with him; saw him on his return, and was talking about his (Huntley's) condition; think they were gone from four to six months.
Q. Did you see him shortly after his return?
A. Yes, sir.
Q. Had his health improved?
A. Don't think he had; may have improved a little, but was not well.
Q. Do you remember when he got married?
A. Don't remember when he got married; heard of it at the time.
Q. Was it after his return from Europe?
A. Yes; I understand it was.
Q. Do you know, Mr. Church, anything about the copartnership between C. C. and S. S. Huntley on mail routes for the contract term from July, 1874, to 1878?
A. No; I don't know anything about their partnership arrangements from 1874 to 1878, any more than general rumor, hearing Charlie talk; had no knowledge of the particulars.
Q. Do you—that, in point of fact, there was a partnership between them during those four years?

102 A. Well, I don't know; I never saw any writings.

Q. Well, but you say you heard Charlie talk; you were intimate with both these parties?

A. Yes; I understood from Charlie that he was going to let Si have an interest somewhere in the Western Stage Co.; don't know whether Si told me so or not; he might have told me; we were very intimate on both sides all around.

Q. I understand Charlie told you he was going to let Si have an interest in the Northwestern Stage Company?

A. Yes, sir; I believe he did.

Q. Did you ever borrow any money of C. C. Huntley?

A. Yes; lots of times.

Q. Are you still indebted to him?

A. I think I am, about $90. We were talking it over the other day, and agreed to that.

Q. Been standing some years, has it?

A. Well, it has; but there has never been any time but that I could not have paid it. I held it under a little protest, and until we could talk the matter over, knowing that when he was able we could talk the matter over and arrange it. There was never a time when I could not borrow from him, either here or in Montana.

Q. You have spoken of servants' wages and cost of living in Montana; what was the cost of drinks out there?

A. Twenty-five cents every trip for lager beer.

Q. Same for whiskey?

A. Yes; I think it is 25c. all around. If they had any extraordinary brandy it was half a dollar.

Q. Now, you have stated that it absorbed a year's salary for the support of yourself and wife in that country during the time you were assessor; can you state about how much it cost you daily on an average for whiskey?

A. I was a social sort of fellow, and was always ready to treat. I was in politics; ran with politicians and stagemen, and all that kind of business. If I had been close and penurious I might have saved something.

Q. You drank pretty freely, did you not?

A. I drank freely; never got drunk; usually took two or three drinks a day, sometimes; sometimes not any; used to take a drink down town in a social way when anything important occurred; used to drink a good deal through that.

103 Q. In a social way, it cost you a good deal of money to live?

A. Yes, it did.

Redirect examination:

Q. By whom were the returns of C. C. Huntley made to you or your assistant assessors?

A. By S. S. Huntley, as I understood.

Q. By whom were they sworn to?

A. By S. S. Huntley, I think. Of course, he was doing the business; they had to be sworn to by him.

Q. Did you ever see any sworn to by him?

A. I don't think I ever personally saw him hold up his hand.

Q. Did you ever see the paper?

A. Yes, I must have seen them. I looked into all those matters when returns were made, to see who was paying.

Q. You say, in a general way, that S. S. Huntley was always a good liver. What do you mean by that?

A. A good deal like me; spent his money freely; don't mean any discredit to him; he was regarded by us as a good liver.

Q. The horses of which you speak—were they stage horses?

A. No; there was plenty of horses there that they did not work to stages.

Q. What kind of horses?

A. Fine driving horses.

Q. Have you always been on terms of intimacy with C. C. Huntley?

A. Yes, sir.

Q. And has he not heretofore invited you to remain with him when in this city?

A. Yes, always.

Q. Have you any interest in this suit whatever?

A. Not any whatever.

Mr. Mattingly inquired of witness if he had not talked with C C. Huntley about this suit; if he did not say that he had talked with him about it; and in what way and for what purpose had they talked about it?

A. Well, in order to make it plain. The first I knew that I was to testify was when I came here to fix up or settle a little business
104 of my own. Stopped down at the Hotel St. James. My wife and I called up, as usual, and as we had before, to pay our respects, and Charley said, "You will come up here and stay with me." He sent down for my things. We were walking out two or three days after, and he said, "I believe I will have you sworn in this case," and then the conversation came up about matters, and that is about all what was said. I spoke of it afterwards. It came up in a family way. That was the first I knew that I was to be sworn; for I did not know until last fall, when I passed through here on my way to the Shenandoah valley, either Mrs. Huntley, or that Charley had sued Si.

Recross:

Q. This matter of the returns to you as assessor does not seem to be material in this connection; but have you any definite and positive recollection of ever having seen any return at all purporting to be signed and sworn to by S. S. Huntley; or is it not merely a surmise of yours, from the fact that he was engaged in that business while you were assessor of internal revenue, and you supposed that returns were made?

A. Just let me explain, so as to make it clear. The collector was complaining that there was no tax collected on gross receipts, and, I

think, through him, that we got the order of the deputy supervisor of internal revenue for the assessment. I called the assistant assessor's notice to it—Mr. S. S. Hart—and he went to Mr. Huntley for the returns.

Q. How did you know that?

A. From the fact that we talked the matter over, and he said that they were carrying a good many passengers, and doing a good deal of business, and they should pay on their gross receipts. The collector seemed to be determined that there should be an assessment to pay this tax. That is how my notice was called to this case. While I felt like doing my duty, I did not like to press Huntley. As to the amount that Si gave in, I could not swear, but I know that he did make a return of some amount.

Q. Can you state now, from your recollection or memory, that the collector was insisting that all stage lines in that country should make returns; of course, not from the fact that any conversations passed between you and your assistants, or any one about this
105 business, but from your personal recollection, will you state now positively that you remember ever having seen any returns at all purporting to be signed and sworn to by S. S. Huntley?

A. I think that Hart showed me the returns at one time and complained that it was not more. Yes, sir; I am positive that he did.

Q. Did you see the return?

A. Yes; saw the return from S. S. Huntley. I don't know how many times, but am sure I saw the returns one or two or three times. My attention was called to it, and he complained that they did not make them and that we should assess them, as we had authority to assess when they did not make their returns.

Q. Did you ever cause any assessment to be levied?

A. I did not in their case; I did with Gilmer & Salisbury.

LUCIUS BOWEN CHURCH.

Subscribed and sworn to before me, this 13th day of March, 1880.

[SEAL.] BARTRAM ZEVELY,

U. S. Com's'r and Examiner in Chancery, Dist. of Col.

THOMAS S. HUNTLEY, a witness of lawful age, produced for the defendant, being first duly sworn, deposes and says:

My name is Thomas S. Huntley; I reside at Huntley, Illinois, and my occupation is that of a farmer; I have no interest, direct, or indirect, in this suit.

By Mr. WILSON:

Q. 1. Where were you living in the years 1864, '5, and '6?

A. I was living in California.

Q. 2. When did you go to California?

A. I went there in 1864.

Q. 3. What time?

A. In May.

Q. 4. From where?

A. From Huntley, McHenry Co., Ill., where I resided.

Q. 5. And where you still reside?

A. Yes, sir.

Q. 6. Why did you go there?

106 A. I went there for the health of my family.

Q. 7. Where was C. C. Huntley, the defendant in this case, at that time?

A. I suppose he was in Libbey prison. I arrived here on the 9th of May. I was here to get a special exchange for Charlie, who is my son, but it was too late; the time had passed.

Q. 8. How long had he been in prison?

A. He had been there about four months.

Q. 9. From what time?

A. He was taken prisoner the 1st of January, 1864.

Q. 10. When did the defendant, your son, join you in California?

A. It was some time in April, or it may have been in May, but it was in the spring of 1865.

Q. 11. When was he released from prison?

A. He was released some time, I think, in December of 1864.

Q. 12. When you were here, he had been in prison some time?

A. Yes, sir; when I was here, he had been in prison some time.

Q. 13. What regiment did he belong to when he was taken prisoner?

A. The 16th Illinois Cavalry.

Q. 14. When he came to California in the spring of 1865, state what pecuniary assistance you rendered him, and what enterprise or business he then engaged in.

A. In the first place, he engaged in selling some horses for me that I had taken out there. I had some ten or fifteen horses, and he engaged in selling those horses for me at Marysville, California.

Q. 15. At what time did he then go from there to Montana?

A. He did not go to Montana until the winter of 1866—in February, I think, of 1866.

Q. 16. He went to Montana from California in February, 1866?

A. Yes, sir.

Q. 17. What money did he take, and what aid did you give him?

A. I gave him all the aid I had, and with what Charlie had

107 at that time—what he had accumulated—that he took between thirteen and fourteen thousand dollars, all told, in property—horses, stages, and everything. As near as I can recollect, I should think he had fully that.

Q. 18. What did he do when he first went to Montana?

A. He put up a drug store there, and, in addition to that, he went to running an express or stage, as you may call it, from Helena to Fort Benton.

Q. 19. How long did he carry that on?

A. He carried that on nearly a year. After that he sold out the route about the 1st of July of the next season to Wells, Fargo & Co. As I understood, they were to give him $10,000 for leaving the route. He got the mail contract and an escort of soldiers, because when he first went out there he had no protection.

Q. 20. What relation is the plaintiff, S. S. Huntley, to you?

A. He is my brother's son.

Q. 21. Where was he when your son Charles went to Montana?

A. He was in New York.

Q. 22. What do you know of the circumstances under which S. S. Huntley went to Montana?

A. He went there to assist my son as a hired man.

Q. 23. At whose suggestion?

A. I suggested his getting him, and my reasons for it were that he was there alone in a wild country, and if he had some one of some kin to him it would be better and safer for him.

Q. 24. What were the circumstances of S. S. Huntley when he went to Montana?

A. Well, I don't suppose he was worth a dollar.

Q. 25. Do you know he was not?

A. I don't know it in any way except that he said he had spent all his earnings he had made here, and likewise in New York.

Q. 26. Had he been living here in Washington?

A. Yes, sir; he was in Washington in 1864.

Q. 27. In what business?

A. In the War Department.

Q. 28. Clerk?

A. Yes, sir; clerk in the War Department.

108 Q. 29. After he went to California, and before the time of Charlie's sickness, how often were you in the habit of seeing him and Charlie?

A. I was in the habit of seeing them two or three times in the course of a year; twice, certainly, and sometimes oftener.

Q. 30. When did you first see Charlie in 1874?

A. I cannot say whether I saw him at the time he was going west in July or August. I could not say whether I saw him then or saw him when he was on his way—when he went to New York or California, or to Salt Lake. I begged him not to go any farther than Salt Lake, because it was not necessary for him to go any farther, and I did not want him to go because of his health. I could see his health was very poor. He was just recovering from a fit of sickness. That was in 1874—about the last of July or some time in August.

Q. 31. He was then in poor health?

A. Yes, sir.

Q. 32. Up to that time, what, if any, information had you received from S. S. Huntley or C. C. Huntley as to any interest owned or claimed by Silas in the Northwestern Stage Company or the Oregon and California Company?

A. I did not understand that he had any claim, but that he was simply a hired man. But he had an interest in some four little mail routes. I think one was the Sweetwater route.

Q. 34. After you saw him on his way to California, when did you next see him?

A. It was in September; I think it was in September when he came on. Si was with him, and another gentleman in attendance.

I do not remember his name. They were bringing him on you might say almost helpless. I joined them at Chicago and went on to New York. I stayed with him there some three months, until he materially improved, so that he came out to my place at Huntley, Illinois.

Q. 35. What was his condition from the time he returned to New York until he again went home with you?

A. He didn't really realize where he was, but thought he was in California, where he had dropped over with this paralysis. He seemed to have in mind that he was in San Francisco. He appeared to rouse up at a time when in New London, and inquired
109 where he was. I told him in New London and the British possessions. Doctor Keys asked him where he was two weeks after, and he said in New London and the British possessions and California.

Q. 36. Was he at that time in a condition to attend to business?

A. No sir; he was not.

Q. 37. Now, will you state what arrangements were made between you and the plaintiff, Silas S. Huntley, in regard to the management of the business of C. C. Huntley when you were with your son in New York?

A. That arrangement was that he was to attend to Charley's business; go right on with it just as he had before; he understood all of his business.

Q. 38. Did you have frequent conversations with him as to the condition of the business?

A. I talked with him more or less about it, and this proposition of my son's going to Europe——

Mr. WILSON, interrupting:

Q. 39. I am speaking of your first being in New York. When from and whom did you first hear of C. C. Huntley's proposed visit to Europe?

A. After he went back from the visit at my house. I think that Silas—but I would not be sure—wrote to me respecting Charley's going to Europe. Well, I opposed that idea on account of the fact that I thought quietness was what he needed, and I finally went on to New York and consulted Doctor Keys, and Doctor Keys said it might not injure him, and Doctors Keys and Van Buren gave letters of introduction to some of the first physicians in Europe.

Q. 40. Did you go on to New York before his departure for Europe?

A. Oh, yes; then I came on to Washington, and then went back to New York.

Q. 41. What arrangements were made by you, or with your knowledge, concerning the management of C. C. Huntley's business?

A. I was here at the time the papers were drawn out.

Q. 41. State what they were.

A. They were drawn out so that Si could attend to Charley's

110 business just the same as if Charley was present himself. Some papers were drawn in blank, and Charley signed them.

Q. 42. Describe those papers.

A. They were signatures on blank papers; nothing written over them. He requested them because he said some emergency might arise in his business, and it would be material and requisite for him to have such papers.

Q. 43. Had you any information which you received from Si at any time prior to Charlie's departure for Europe as to his (Si's) interest in the Northwestern Stage Co. or the California and Oregon Co.?

A. I heard nothing spoken of.

Q. 44. He did not say at any time that he had an interest?

A. No, sir.

Q. 45. What reason did he give for wanting Charlie to go to Europe?

A. The reasons he gave were that he thought it would be a material benefit to his health, and because he thought there was a probability of his marrying a lady in New York; and he thought it would not be best.

Q. 46. After his return from Europe, what, if any, interviews or conversations did you have with S. S. Huntley as to the management of Charlie's business, and the management of Charlie himself?

A. Si talked as if his business was all going on right. About Charles, his advice was that there should be something done to take the business all out of his hands, so that he should have no control over it in any shape or manner, or that he should be taken to a lunatic asylum.

Q. 47. Did Si at any time make any explanation to you as to the real condition of Charlie's business, and as to the property that he had?

A. He never did. He stated that there were a number of horses, carriages, and property that Charlie had in his business, but I could not say the amount; there was quite a heavy amount of horses.

Q. 48. Did you request him to furnish you with an account or statement of the moneys due Charlie on mail contracts or otherwise; and, if so, how frequently?

A. I spoke to him two or three times about it, and one time
111 he pretended to furnish something of an account of what it was; nothing that was satisfactory; I knew there was nothing in the account that he rendered me.

Q. 49. He never did render any account.

A. He never rendered any account in full.

Q. 50. Did he render any account showing what sums were due in respect to the mail contracts?

A. No, sir.

Q. 51. Did he ever render any accounts showing what sums were due him in respect to the Northwestern Stage Co. or the Oregon and California Co.?

A. No, sir.

Q. 52. Did you ever hear from him prior to the institution of this suit, two years ago, that he claimed an equal interest with Charlie in the Northwestern Stage Co. or the Oregon and California Co.?

A. I heard something of the kind when I was here in Washington about that time, that there was some suits commenced, but nothing before that.

Q. 53. Have you any personal knowledge of the expenditures made by S. S. Huntley, on personal or family account, during the time that he was in Charlie's employ, and prior to 1874?

A. Prior to 1874 I judge his expenditures on his half-brother's and half-sister's and his father's family, &c., were to a considerable amount, I should think.

Q. 54. I asked you what you knew of anything you heard from him.

A. He told me he was going to redeem a certain piece of property that belonged to the heirs of an aunt's estate, and take it, and that he had done that, and that there was an incumbrance upon the farm his father had, and that he was going to redeem that likewise. He refixed his father's house to a considerable extent, and furnished a carriage and harness, to my knowledge. Then there was quite a lot of pictures that he sent from California to furnish the rooms?

Q. 55. Where did his father live?

A. His father lived in Elicottville, New York.

Cross-examination by Mr. WILLIAM F. MATTINGLY, solicitor for complainant:

Q. 56. Please state how old you are?

A. I am 73 years of age.

112 Q. 57. Your son Charles arrived at your home in California in April, 1866, I think you stated?

A. No; 1865.

Q. 54. At that time had he any moneys?

A. Who; Charlie?

Q. 55. Yes.

A. Yes; Charlie had somewhere about $1,200 in Government bonds or Government securities. He lost on his route about six or seven hundred dollars. He got jammed up coming, and lost one of hjs bonds that he had with him. I guess he had in the neighborhood of $1,200 after losing this bond.

Q. 56. He remained with you then how long?

A. He remained with me until somewhere about February, then he started for Montana, February, 1866

Q. 57. During the year he had been with you had he made anything?

A. Oh, yes.

Q. 58. How much?

A. I cannot say. I offered him $100 a month to stay right with me and not to lift his hand. He could push himself through, earning a hundred dollars a trip sometimes. He took four horses of mine, and I got him a wagon and went to work, after selling the

horses for me. Charlie was born in 1844. This was in 1866 or 1865 when he came. He was about 21 years old.

Q. 59. During the year that he was with you how much money did he make?

A. I should think probably he made in the neighborhood of $100 per month, on an average—he often made more, but certainly on an average he made that—sometimes on one trip he would make a hundred dollars; I could not say definitely, as I kept no tally.

Q. 60. About $100 per month.

A. I should it would average that.

Q. 61. Then he went to Montana?

A. Yes, sir; I fitted him out with two Concord coaches and fourteen head of horses, and he had, I should think, an amount between thirteen and fourteen thousand dollars.

Q. 62. Did he put in what he had himself and you advanced the balance?

A. Yes, sir.

113 Q. 63. Did you follow him to Montana?

A. No, sir.

Q. 64. How did you know as to what took place there?

A. I knew by reports. I had intercourse backwards and forwards with Charlie and others that came from there.

Q. 65. You had no personal knowledge?

A. I was not there on the ground; only I got it from letters what transpired.

Q. 66. When did S. S. Huntley go out there?

A. I think in the spring of 1867.

Q. 67. Did you see him before he left?

A. No; I did not see him before he left; I was here in Washington after he went there.

Q. 68. I mean after it was understood that he was to go; did you see him before he started?

A. No, sir, I did not see him.

Q. 69. When did you first see him after 1867?

A. I could not say; I saw him in 1868.

Q. 70. Where?

A. At my place. I had returned back to Illinois—to Huntley—in 1868.

Q. 71. When did you leave California?

A. I left there in July, 1868.

Q. 72. You went to the place where you now reside, in Illinois?

A. Yes, sir.

Q. 73. And S. S. Huntley was there, I understand, in 1868?

A. Yes, sir.

Q. 74. He stopped there on his way?

A. He stopped, as I suppose, on his way from Montana to his father's home in Washington.

Q. 75. When did you next see him after that?

A. He was at my house, I think, the next month buying some horses.

Q. 76. The spring of 1869?

A. Yes, sir.

Q. 77. Was he very free and open in talking about his business?

A. Not much so; pretty close.

Q. 78. Very reticent about talking about his business?

A. Very close, sir; that is a peculiarity of the Huntley family.

114 Q. 79. Mr. MATTINGLY: That is a peculiarity of the Huntley family, and he is a little more peculiar than any of the others in that respect?

A. Yes, sir.

Q. 80. Then you would not derive much satisfaction as to a knowledge of affairs in talking with him or Charlie?

A. Not very much; not unless you called him directly out.

Q. 81. Then it would be pretty hard pumping, I suppose?

A. Well, I suppose so; I am not much of a pumper—not as much of a one as I ought to have been.

Q. 82. Did you make any effort, Mr. Huntley, during those years to ascertain from Charlie or Si as to what the business relations were between them, and what success they were making?

A. Yes, I did; I had favorable reports from him about Charlies' business; he generally gave favorable reports; but after Si had been in the business considerable time he talked as if the business was running rather shady.

Q. 83. When was that?

A. About in the neighborhood of a year, I should think, before the contracts ran out.

Q. 84. Prior to 1874, did you see much of Si?

A. He was at my house—and I saw him at his father's here—two or three times—well, twice, perhaps, in the course of a year, after I had returned from California.

Q. 85. That was in 1868. Now, from 1868 to July, 1874, those six years, can you state how often you saw him during those six years?

A. I could not state, sir; there were some times when he would be around in three or four months, and then not again for six months. When the winter season came on again they came on to Washington, and when the spring season came went back on to the grounds.

Q. 86. Did Si come East every year, to your knowledge, prior to 1874?

A. Yes; I think he did. At Christmas time, in 1874, I was in New York with Si and Charlie both—I went on there to spend Christmas with my son.

Q. 87. The relations between Si and Charley had been very intimate, close, and confidential, had they not?

A. Yes, sir; just as much so as they could be between
115 father and son. Charlie was tied more closely to him than any other person on earth. I could not make him believe there was anything wrong. I began to smell a mouse, however, and finally concluded there was something wrong.

Q. 88. You finally concluded there was something wrong?

A. Yes, sir.

Q. 89. When did you come to that conclusion?

A. Previous to the year that I speak of that I was here and wanted Charlie to take all of his business out of Si's hands.

Q. 90. What year was that?

A. The year before the contracts expired—Charlie's mail contracts—these last ones.

Q. 91. They expired in 1878. Then it was in 1877?

A. Yes, sir; then I began to think there was something wrong; that Charlie was not getting the amount of money he should get, and I advised him to take the powers of attorney he had given Si. He had some contracts in other persons' names, and had given Si powers of attorney made out at the time I speak of, and I advised him to countermand all those powers of attorney.

Q. 92. And he did it, did he not?

A. I guess he did; he ought to have done it before.

Q. 93. What did you know about the business of the Northwestern Stage Company?

A. I knew very little about the business of that company; no more than I did of the other.

Q. 94. You say you did not understand from Si, as I understand you, or from Charlie, that Si had any interest in them?

A. No, sir.

Q. 95. Did you understand from him that he did not have any interest?

A. No; I did not understand from him that he did not. I understood from him that he had an interest in some small contracts.

Q. 96. You understood that from Charlie?

A. Yes, sir; and I think Si spoke of it as having an interest in some small contracts, and remember distinctly his speaking about it.

Q. 97. When was it he had that talk with you?

116 A. I could not say exactly what time it was.

Q. 98. What year was it?

A. I do not know that I could tell that distinctly.

Q. 99. But as near as you can come to it.

A. I could not say what time it was; whether it was before or after Charlie was fitted out to go to Europe.

Q. 100. You do not know whether it was before or after Charlie went to Europe?

A. No; I couldn't say.

Q. 101. Was it in New York?

A. I should rather think it was here, at Washington; I wouldn't be positive as to that; I had more conversations with him about the business when he was fitting out to go to Europe than at any other time; there was jawing pro and con respecting Charlie's business and that he could not attend to it.

Q. 102. When was it that you asked Si for these statements that you have spoken of?

A. After Charlie had returned from Europe; I rather think when he was off at the Sandwich Islands that I asked him for the statement; after he came back from Europe he took a trip to the Sandwich Islands.

Q. 103. In what year did he go there?
A. The year following.
Q. 104. His return from Europe?
A. Yes, sir.
Q. 105. When did he return from Europe?
A. In the spring; he started for Europe, sixth day of January.
Q. 106. What year?
A. That was in 1876, I think.
Q. 107. The sixth day of January he started for Europe?
A. Yes, sir.
Q. 108. He returned when?
A. I think along in May of the same year.
Q. 109. Then he was only gone a few months?
A. Only a few months; five or six months; the next season following he went to the Sandwich Islands.
Q. 110. That was in 1877?
A. Yes, sir; 1877.
Q. 111. It was while he was at the Sandwich Islands that you asked Si for these reports?
117 A. I would not say that it was at that time, or when he went to Europe the second time; I called upon him two or three times for these reports, and I got a partial report from him, but it was not satisfactory.
Q. 112. By Mr. WILSON: Have you got that?
A. I think I have it now.
Q. 113. Won't you look it up?
A. It may be among my papers.
Q. 114. By Mr. MATTINGLY: Was Si paying any money to you on Charlie's account?
A. He was; a trifling amount.
Q. 115. What was your object in asking for these reports?
A. To see how my son's business was moving on.
Q. 116. Charlie had not left instructions with Si to report to you, had he?
A. No; but in view of my relations to Charlie, I stepped right in and looked after his business.
Q. 117. You had a natural desire to know how your son's business was going on?
A. Yes, sir.
Q. 118. Was there any obligation on Si's part to make any report to you?
A. No; only a gentlemanly honor to make report to me, and my only regret is that I did not look after his business more closely.
Q. 119. Charlie went to Europe a second time, when?
A. I cannot tell as distinctly about the second time as I can about the first; the impression is in my mind, but I would not undertake to state distinctly.
Q. 120. Was it after his return from the Sandwich Islands?
A. I will not be certain whether it was previous or after; it seems to be a kind of blank in my lifetime; the loss of my daughter, my son's illness, and the loss of my wife, had such an effect upon me

that I could not keep track of these things, or state as distinctly about them as I could before, or within the last year or so.

Q. 121. After Charlie was taken sick out West, you met him in Chicago?

A. Yes, sir.

Q. 122. And came on with him to New York?

A. Yes, sir.

Q. 123. And remained with him how long in New York?

118 A. I think about three months, before Charlie got so he could go out home.

Q. 124. And took him out to your home in Illinois?

A. Yes, sir.

Q. 125. How long did he remain there?

A. I do not think he remained there a week.

Q. 126. Did Si go with him to your home?

A. Not at that time.

Q. 127. After he left your house where did he go?

A. Back to New York.

Q. 128. Did you go with him?

A. No; there was a colored man, a very trusty servant, named Carter, that was with him to look after and wait on him.

Q. 129. When did you first hear of his contemplated trip to Europe?

A. I should think three or four weeks previous to his setting sail.

Q. 130. After he had left you and gone back to New York?

A. Oh, yes.

Q. 131. Then you went on to New York?

A. Yes, sir; and then I came up here to Washington.

Q. 132. That was in December, I suppose, of that year?

A. Yes, sir; I staid with him until 6th day of January, when he sailed.

Q. 133. And what year was that that you came on?

A. December, 1875; on 6th day of January, 1876, he sailed for Europe.

Q. 134. How was his health at that time? Had it retarded after he left your house; had he gotten worse?

A. No; I think he had rather improved, if anything.

Q. 135. A great deal better; you thought it unnecessary for him to go to Europe?

A. I thought he would improve by quietness and rest, and that was what he required, as I thought, more than the motion and excitement of travelling, and that it would recuperate his system more than travel.

Q. 136. Do you know Mr. Bradley Barlow?

A. Yes, sir.

Q. 137. He was in New York at the time you were there, before Charlie sailed?

119 A. He was here; I saw him here at Washington before Charlie sailed; I frequently saw him.

Q. 138. Did you see him in New York?

A. I could not say.

Q. 139. Was he in New York at the time these papers were executed?

A. They were executed in Washington.

Q. 140. None executed in New York?

A. No, sir; all executed here in Washington.

Q. 141. Mr. Barlow was here?

A. Yes, sir.

Q. 142. Was Mr. Barlow anxious that Charlie should go to Europe?

A. Not that I know of; I do not think he displayed any anxiety.

Q. 143. I mean did he say anything about its being to his welfare to go?

A. I did not hear him say pro or con.

Q. 144. Now, did I understand you as saying that Si seemed anxious that Charlie should go to Europe?

A. Yes, sir; he seemed to be very anxious to have him go, and put the thing afloat to have him go.

Q. 145. Did Mr. Barlow say anything to you about the probability of Charlie's marrying this girl referred to?

A. In New York?

Q. 146. Yes.

A. I do not know that he did.

Q. 147. Do you know that he did not?

A. I do not know that he did not.

Q. 148. Don't you remember his talking on that subject with you?

A. If he had talked with me I should remember it.

Q. 149. Did you make any inquiries to ascertain as to the probability of Charlie's marrying this girl?

A. Yes; I heard something about it. I was at her house with Charlie two or three times whilst I was in New York.

Q. 150. You saw the young lady?

A. Yes; I saw her, and she was as sharp as a two-edged sword. I think she could capture most any individual.

Q. 151. Were you willing to have Charlie marry her?

A. I had no objection; that is, if she wanted to marry him.

120 Q. 152. Were any reasons given to you why it would be undesirable for Charlie to marry her?

A. No. Still, considering the condition he was in, I should think that a young lady was running a risk to marry him. That would be simply my idea from the state of health he was in.

Q. 153. Do you remember anything having been said as to the financial condition of her father?

A. All I know is from hearsay.

Q. 154. These papers that Charlie signed before going to Europe, they were explained to him, were they not?

A. I think they were.

Q. 155. He understood what he was doing?

A. He appeared to understand what he was doing. Somehow or other his mind would wake up on his business matters, and he would seem to be as straight as clockwork.

Q. 156. That was continued from that day to this?

A. I think it has.

Q. 157. Don't you think his memory is more remarkable as to business matters?

A. I think it always was. It is something hereditary. I was told that once when I had a fit of sickness, and was out of my head with fever, and they didn't think I would live, that they would come to inquire about business, and they said I would invariably answer to a cent just how matters stood, and I would have no recollection of it. They thought I was going to die, and, there being no papers, they wanted to call it out, and I would give the answers, and have no recollection of it at all. Charlie had a most tentive memory of any boy or man I was most ever acquainted with, and he possesses more or less of that memory now, so far as business transactions are concerned.

Cross-q. 158. At this time, when these papers were executed, before he sai-d for Europe, you say he signed some in blank?

A. Yes, sir.

Cross-q. 159. Do you know of those blanks having been used?

A. No, sir; I do not.

Cross-q. 160. You were present and saw these papers?

A. Yes, sir.

Cross-q. 161. There was no effort to conceal them?

121 A. No, sir.

Cross-q. 162. Nothing underhanded?

A. No, sir. Simply that Charlie was going away, and that there should be some one to see to his business in case of an emergency.

Cross-q. 163. You made no objection to the papers being signed in blank?

A. If a member of the Huntley family once had confidence in any one, they would never lose it, and I think Charlie would do anything for Si now. He has that kind of forgiving spirit.

Cross-q. 164. Now, as to the business of the Northwestern Stage Company, what control had Si over that concern?

A. 165. Just the control over that that he had over any other of Charlie's business.

Cross-q. 166. Drew all the money from the Department?

A. He had a power of attorney. I did not inquire so much into that. Barlow had an interest in it, and would attend to that matter. Barlow assured me that he was looking out for Charlie's business the same as he had always done. Charlie was in company with Barlow. I wouldn't say that there were any papers drawn, but that he was to receive the moneys which Barlow was interested in. I could not say that there were, because I supposed Barlow would look out for that himself, and for Charlie's interest.

Cross-q. 167. Then, so far as the Northwestern Stage Company was concerned, you expected Barlow to look after Charlie's interest in that?

A. Yes, sir; they being in company and being interested together.

Cross-q. 168. Wherever Barlow was interested in matters in which

Charlie was interested, you relied upon Barlow to look after Charlie's interest there?

A. Yes, sir.

Cross-q. 169. Who drew the mail pay, Barlow or Si?

A. I do not know; that would be something I suppose Barlow would attend to and settle with Charlie about.

Cross-q. 170. And you do not suppose that Si would have anything to do with drawing that?

A. No, sir.

122 Cross-q. 171. Was there any talk with you and Si about his interest in the Northwestern Stage Company whatever?

A. I do not think there was anything come up about it in that light.

Cross-q. 172. After this litigation began, of course you talked with your son about it?

A. Yes, sir.

Cross-q. 173. After these suits began you talked with Charlie and he with you about the suits and litigation?

A. Yes, sir.

Cross-q. 174. Barlow knew all about the business of the Northwestern Stage Company, I suppose?

A. Yes; he is a pretty sharp man. I thought Charlie pretty well favored in having so sharp a man in company with him.

Cross-q. 175. He knew Charlie's interest in the concern?

A. I suppose so; he is a man to know what belongs to him and what belongs to somebody else.

Cross-q. 176. He understands what belongs to Bradley Barlow?

A. Yes, sir.

Cross-q. 177. Charlie is a pretty sharp, shrewd, business man, is he not?

A. Yes, sir; I think he was previous to having this stroke of paralysis.

Cross-q. 178. Previous to 1874, was Si with him?

A. Yes; he was with him from the time he first went on to the time the contracts expired.

Cross-q. 179. Very large sums of money were made, were they not?

A. I suppose there were.

Cross-q. 180. Was not that your opinion?

A. Yes, sir.

Cross-q. 181. Have you any idea of the amount.

A. I do not know as I could tell. It was a heavy amount.

Cross-q. 182. A million dollars?

A. I should think it would come near that. All expenses were to be deducted from that. There were 3,000 head of horses, and I should think the expenses to control this thing would be enormous.

123 Cross-q. 183. I am talking about the profits—the amount of money made?

A. I could not say what the profits were—what amount of money was made.

Cross-q. 184. Charlie spent it pretty freely, did he not?

A. Yes, sir; and Si likewise.

Q. 185. Now, what do you know about Si's spending money?

A. I have been with him in New York, and I have been with him here.

Q. 186. I mean prior to 1874?

A. I do not know so much about it prior to that, only that he furnished his sister and half-sisters and half-brother and sent them to school and what he spent on his father. I do not know so much about that before as after 1874.

Q. 187. Do you know anything about Si's personal expenses prior to 1874?

A. No; I do not know much about it. I know he was with Charlie and used money out of the same purse and drew money whenever he wanted it, and I have heard him say that he always had all the money he wanted.

Q. 188. But what I want to get at is his—your own personal knowledge of his expenses?

A. I had more knowledge after that than I did previous to that.

Q. 189. Now, you said something about his redeeming a mortgage on his father's farm. Do you know that he did redeem it?

A. I do not know for a certainty, but he said he was going to do it.

Q. 190. When did he say he was going to do it?

A. I do not know.

Q. 191. Was it prior to 1874?

A. I think so.

Q. 192. Where did that conversation take place?

A. I could not say positively; either at my home or in New York.

Q. 193. Is his father still living?

A. He is, to my knowledge. I have not heard of his death.

Q. 194. He is your own brother?

A. Yes, sir.

124 Q. 195. There was some other incumbrance you stated he was going to redeem?

A. Yes, sir; on his aunt's house. He was going to buy off the claim of some heirs and take the building.

Q. 196. Did he do that?

A. He said he was going to do that.

Q. 197. Do you know that he did it?

A. No.

Q. 198. What else was he going to do?

A. I know he spent a great deal of money on my brother's house—Si's father's house.

Q. 199. What money did he spend on that house, and when; prior to 1874?

A. I think it was prior to 1874.

Q. 200. Are you certain of that?

A. I think it was. I think it was in 1873 that he began the repairs.

Q. 201. On his father's house?

A. Yes, sir.

Q. 202. What was done—what amount was expended?

A. I should think between seven and eight hundred dollars, all told, on the house.

Q. 203. How do you know he paid for the repairs?

A. Only that he said so. His father told me that Si furnished the means.

Q. 204. Those repairs were put on, you think, in 1873?

A. Yes; I think they were.

Q. 205. Well, what else?

A. He sent him a carriage and harness.

Q. 206. To whom?

A. His father. The harness was stolen, and it cost ten dollars to find the thief.

Q. 207. What were the carriage and harness worth?

A. I could not say.

Q. 208. Was that prior to 1874?

A. I think it was.

Q. 209. Si told you he had sent that carriage and harness?

A. Yes, sir.

Q. 210. Where did he tell you so?

A. I would not be positive whether it was here, at my place, or in New York.

Q. 211. Well, what else?

125 A. I do not recollect of anything else. He furnished quite a lot of pictures, which were sent on from California; the pictures came after 1874.

Q. 212. That was not prior to 1874?

A. No, I think not; not when the pictures came.

Q. 213. You have been in the habit, I presume, from time to time, of visiting your brother in New York State?

A. Yes, sir.

Q. 214. When were you there last?

A. I have not been there since 1876.

Q. 215. You were there in 1876?

A. Yes, sir.

Q. 216. When were your there prior to that time?

A. I was there in '64 and '63.

Q. 217. You mean '74?

A. Yes, sir; I mean '74 and '73.

Q. 218. Has your brother visited you in Illinois?

A. He never has; he is not so much of a moving planet as I am; if he had been he would not have remained in New York.

Q. 219. He would not have remained in the effete State of New York?

A. No, sir.

Q. 220. Well, now, these seven years, from '67 to '74, when Charlie had his health, and he and Si were working together, as I understand, Si was in Charles' employment, do you know what compensation Si was to receive?

A. I do not know as I could tell from Si's say-so. I could tell from my son's say-so.

Q. 221. I do not ask for that. Did you have any conversation with Si about it?

A. I do not know that I ever asked him.

Q. 221. That was the time the heavy part of the business was done?

A. Yes, sir.

Q. 222. Si was a pretty good manager, was he not?

A. Pretty accurate and pretty quick. I think, though, that Charlie marked out the line, because I know when Charlie was at home, at my house, he wrote to Si what to do in such and such matters. While Charlie was in health he kept the head management of everything.

Q. 223. When Charlie left here to go to Europe the first time, do you know what contracts he had up to that time?

126 A. I do not know all the contracts. I know there were certain ones in Gilbert's name, some in Church's name, and some in Morse's name.

Q. 224. You are speaking of the old contracts now. What I want to know is whether you were fully posted as to the condition of business; what was on hand at that time?

A. I do not know as I can say distinctly.

Q. 225. You merely had, as I understand it, a general idea of the facts, without going into the details?

A. Yes; I never went down into the minutiæ.

Q. 226. Do you know that time what contracts were operating at a loss and what at a profit, and whether any were operating at a loss or any at a profit?

A. I did not hear Si say so, and whether Charlie said so I could not say. I know that Charlie sank about twenty thousand dollars ($20,000) in one route. The Indians interfered, and the men just escaped with their lives; and they were trying to start a route from Saint Paul, and there was some loss there.

Q. 227. I am talking about after July, 1874. Charlie left for Europe within six months from that time?

A. Yes, sir.

Q. 228. Now, I mean at the time Charlie left for Europe; do you know what he and Si had, and whether any of the routes were being operated at a loss or at a profit?

A. I cannot say as to their being operated at a loss, but I understood, generally from Si, that they were doing well. There were some routes I think that Si said were running back, but that he would "brush them up," and there would be a profit.

Q. 229. Were Charlie and Si in partnership in those routes?

A. I do not know that they were in partnership in these routes. I do not know definitely. There was one of Gilbert's routes that Si had an interest in with Charlie.

Q. 230. You think Si only had an interest in those four routes you spoke of?

A. Yes, sir.

Q. 231. The balance of the routes he had no interest in?

A. No; he had no interest in them. He was attending to them on Charlie's account.

127 Q. 232. What compensation was he to receive from that?

A. I did not understand what compensation he was to receive; that was not asked about. He was to attend to the business.

Q. 233. There was no talk about the compensation he was to receive.

A. No.

Q. 234. Then in all these other routes your idea is that Si had no interest?

A. Yes, sir.

Q. 235. And that he was not a partner?

A. No; he was not a partner.

Q. 236. You do not know that he had a half interest as copartner in those routes?

A. No; there was nothing said about that.

Q. 237. Don't you know, in point of fact, that Charlie claimed that Si was his partner in all these routes?

A. No; I never heard any such thing.

Q. 238. Don't you know that he brought suit against him as partner in these routes?

A. I do not know as to his being a partner in any of these routes. I never heard anything of the kind. I know a suit was brought, but don't and didn't know with reference to what routes.

Q. 239. Did Charlie talk to you much about his business affairs prior to 1874?

A. He used to talk considerable with me about his business. He said everything was running pretty well, and that he was making plenty of money.

Q. 240. Made a boast of the amount of money he was making?

A. I do not know that you could call it a boast. He was making a very handsome sum of money.

Q. 241. You felt very glad to know he was making so much?

A. Of course I felt pleased that he was doing so well. I thought that when he went out there the chances would be against him, he being a boy, and going into that wild country alone, where I knew that men were sharper than a two-edged sword, and it was only on account of his determined spirit to go that I consented, but it was entirely to my surprise that he did as well as he did.

128 Redirect examination by Mr. WILSON:

Redirect Q. 1. Was a reason given to Charlie for signing the papers he was asked to sign before going to Europe, and what were the papers intended for?

A. These were intended that he should carry on the business just as it had been, and just as if he was here to transact the business.

Redirect Q. 2. After those papers were executed, and after Charlie went away, didn't Si take and keep and exercise complete and entire control over all his business affairs except his real estate?

A. I think he did, so far as my knowledge extends.

Redirect Q. 3. There was nobody else to do it, was there?

A. No, sir; I had confidence in Silas and felt no uneasiness. In fact, I had no uneasiness respecting Si's business, because I had implicit confidence in him, as I didn't believe there were any better set of men found in the world than the Huntleys—so far as I have any account of the Huntley race.

Redirect Q. 4. You have said that after a time you did begin to suspect that something was wrong. State the grounds of your suspicion.

A. There was a talk that Charlie was not having much money, when I supposed he ought to have large sums, and when I would write to Si about this he would talk as if there was not much money coming to Charlie. That is what first gave me my suspicions.

Redirect Q. 5. Do you know anything of his general expenditures after 1874, his general style of living?

A. Si lived at a very extravagant style, more so than most men, and I know that Charlie did also.

Recross-examination by Mr. MATTINGLY:

Recross Q. 1. Are you not aware of the fact, Mr. Huntley, from association with your son and with Si, and the knowledge you have derived of the way this business is carried on, that a man living in Washington in order to get mail contracts must be extravagant?

A. I think probably so. I do not know whether it is necessary,
but I know that they do. My son lived in an extravagant
129 style, more so than I thought was warranted. Likewise it
was so with Si. I was one of the old-fashioned kind; had no style, no mark to toe—I wanted to be respectable and treat all men alike.

Recross Q. 2. You never undertook to secure mail contracts, did you?

A. No, sir; I never did.

Recross Q. 3. You have no personal experience as to the amount of extravagance that is necessary in order to secure them and the friendship of those who control them?

A. No; I have not.

Recross Q. 4. Now you say papers were executed before Charlie went to Europe; do you know what they were?

A. There were drawn up giving him powers of attorney to transact the business and draw moneys. Those parties that had made contracts belonging to Charlie, but in their names, gave powers of attorney; they were bids put in by outsiders.

Recross Q. 5. Some of the contracts were in Charlie's name?

A. Yes, sir.

Recross Q. 6. It was necessary to have powers of attorney from Charlie, then?

A. I suppose so. All the necessary papers were drawn up, as it was supposed it would be necessary for him to carry on all Charlie's business.

Recross Q. 7. You can't state precisely what the papers were, but only their general object, and what was to be accomplished by them?

A. No, sir; I can state only their general object, and what was to be accomplished by them.

THOMAS S. HUNTLEY.

Subscribed and sworn to before me, this 10th day of July, A. D. 1880.

[SEAL.] BARTRAM ZEVELY,
Examiner in Chancery and U. S. Com'r, Dist. of Col.

Mr. Mattingly wishes it noted that inasmuch as this deposition has been taken in the absence of Mr. S. S. Huntley, he reserves the right to further cross-examine witness after seeing him.

Adjourned to Thursday, July 15th, 1880, at 2 o'clock.

130 THURSDAY, *July* 15, 1880.

Met pursuant to adjournment.

Present: Mr. Mattingly, Mr. Wilson, and Mr. Charles C. Huntley.

CHARLES C. HUNTLEY, being first duly sworn, deposes and says:

1st int. By the COMMISSIONER: State your name, age, residence, and occupation.

A. My name is Charles C. Huntley; I am 36 years of age; I reside in the District of Columbia, and I am an ex-mail contractor.

2d int. By the COMMISSIONER: Have you any interest, direct or indirect, in this suit?

A. I have an interest in this suit. I am the defendant.

Q. 3. By Mr. WILSON: When did you first go to Montana?

A. In 1865.

Q. 4. Where was S. S. Huntley living when you went to Montana?

A. Living in New York.

Q. 5. What was he doing?

A. Clerk in a stock yard, selling cattle.

Q. 6. What arrangement did you make with him about going to Montana with you?

A. I said to him, "You go out to Montana with me, and work for me, and I will give you $100 a month and find you."

Q. 7. Did he go out there?

A. Yes, sir.

Q. 8. When?

A. In the spring of 1866.

Q. 9. When he got to Montana, what duties did he perform; what did he do?

A. He simply attended to the stage office. That was all the duty he performed when he first went to Montana.

Q. 10. What business did you then carry on?

A. I was running a stage line between Helena and Fort Benton.

Q. 11. What else?

A. That is all. I had a drug store and a theatre.

131 Q. 12. From the time he went out there until July, 1874, under whose direction was your business?

A. Under mine.

Q. 13. What payment did you make Silas on account of his salary, and what moneys did he receive?

A. He drew out whatever he wanted, and paid himself, I suppose.

Q. 14. Did he have access to all your moneys, and did he draw on your bank account?

A. Yes, sir.

Q. 15. What moneys did you pay on account of his expenses?

A. I paid all of his expenses.

Q. 16. You paid all?

A. Yes, sir.

Q. 17. Did he ever render you any account of his expenses?

A. No.

Q. 18. Have you any information as to the amount of money he spent a year?

A. I have not.

Q. 19. What did his expenses amount to a year?

A. Four or five thousand dollars, I suppose.

Q 20. Do you know?

A. No; I do not know.

Q. 21. Was he, during all that time, under your direction and control?

A. Yes, sir.

Q. 22. As an employee and assistant?

A. Yes, sir.

Q. 23. The bill of sale that is already in evidence, and which you have seen from Parker, was prepared and delivered to you in this city, was it not?

A. Yes, sir.

Q. 24. State who paid the moneys that are mentioned and provided for in the bill of sale.

A. I paid the moneys.

Q. 25. What, if any, conveyance did you make to S. S. Huntley, or agreement for a conveyance of any interest in the Northwestern Stage Co. or the Oregon and California Stage Co.?

A. I never executed any paper.

132 Q. 26. What, if any, agreement or understanding did you have with S. S. Huntley, the plaintiff, as to the purchase of Parker's interest in the Northwestern Stage Co. or the Oregon and California Stage Co. before that purchase?

A. I purchased that interest.

(Question repeated.)

A. I did not have any agreement.

Q. 27. What did you say to S. S. Huntley about the purchase of that interest before you purchased it?

A. I stated that I would purchase that interest, and he could have half of it for what I paid for it.

Q. 28. When was that?

A. In 1874.

Q. 29. About what time before the purchase?

A. A month or two before the purchase.

Q. 30. Where was that conversation had?

A. At the Arlington Hotel.

Q. 31. S. S. Huntley was not here when the agreement was made to purchase of Parker, was he?

A. No.

Q. 32. What, if any, agreement did you make with S. S. Huntley, that he should have the interest that you purchased of Parker, or any part of it unincumbered, and as compensation for the services he had already rendered you?

A. I do not understand the question.

(Question repeated.)

A. I never made any such agreement.

Q. 33. When were you taken sick after the bill of sale was executed by Parker?

A. A week or so afterwards.

Q. 34. In New York?

A. Yes, sir.

Q. 35. When did you go to California?

A. I went to California the following August, I think, or July, 1874.

Q. 36. After the bill of sale was made by Parker, did you agree with Silas that he should have a half interest, or any part of your interest, without paying for it, or as compensation for services that he had rendered you as clerk?

A. No.

Q. 37. State what, if any, conversation you had with Silas, after that, as to his having a part of that interest.

133 A. I stated that he could have half interest when he paid for it.

Q. 38. Did he ever pay you for that interest or any part of it?

A. No.

Q. 39. Did he ever ask you to make any conveyance or agreement with him as to that interest after the bill of sale was made out by Parker?

A. No. Si Huntley owed me money all the time.

Q. 40. When did you first hear that Si Huntley claimed to be the owner of one-half of the interest purchased of Parker, and of the interest in the Oregon and California Cos.?

A. I do not know when it was.

Q. 41. Was it after you got back from Europe?

A. Yes, sir.

Q. 42. You have seen the paper, which is an exhibit, signed by you and some others, giving Barlow a full power of attorney with reference to the Northwestern Stage Co. State if you remember executing that paper; and, if so, what explanation was made to you about it at the time?

A. I remember I gave Barlow a power of attorney; Barlow agreed to draw the money and pay the money over to me.

Q. 43. What knowledge or recollection have you of the execution of any paper containing an admission that Si had an interest with you in this Northwestern Stage Company?

(Question objected to.)

A. I have no recollection.

Q. 44. When you went to Europe in whose charge did you leave all your business, except that of the Northwestern Stage Company and Oregon and California Company?

A. In S. S. Huntley's charge.

Q. 45. When you came back from Europe what, if any, demands did Si make of you then or at any time for any back pay due him prior to 1874?

A. He never made any demand.

Q. 46. Did you ever at any time admit that he was entitled to $45,000 for his services in addition to what he had already received prior to 1874?

A. I never did admit it; I never owed him a cent.

Q. 47. When you returned from Europe did you allow Si to continue managing your affairs?

134 A. Yes, sir.

Q. 48. Until what time?

A. Until 1877.

Q. 49. Do you know of his signing any notes in the name of C. C. Huntley and S. S. Huntley to Bradley Barlow, and did you give him any autnority to do so?

A. I never gave him any authority to do so.

Q. 50. Did you know of such notes being given at the time they were given?

A. Yes, sir.

Q. 51. Do you recollect the first and second settlements made with Barlow of N. W. Stage Co.'s affairs?

A. Yes, sir.

Q. 52. What, if any, knowledge had you at any time *time* that Si claimed to be equally interested with you in the business of that company and the Oregon and California Company?

A. I had no knowledge of it.

Q. 53. Did he at that time claim an interest therein?

A. No.

Q. 54. What money had Si when he went to Montana with you?

A. He had about ten cents, I think.

Q. 55. What money had you, and what property, and of what value?

A. I had twenty-odd thousand dollars, I reckon.

Q. 56. Has Si ever rendered you any account of the moneys he took and used for himself prior to 1874?

A. No.

Adjourned to Monday, July 19, '80, 2 o'clock p. m.

SEPT. 20, 1880—3 p. m.

Met pursuant to notice, being an adjournment from July 19, 1880.

Present: William F. Mattingly, Esq., solicitor for complainant; Nathaniel Wilson, Esq., solicitor for defendant, and witness Charles C. Huntley.

Mr. MATTINGLY proceeded with the cross-examination of Mr. HUNTLEY:

Cross-Q. 1. When did S. S. Huntley first go into your employment in Montana?

A. In the spring of 1865, I think.

135 Cross-Q. 2. Where was he when you employed him?

A. He was attending to the stock business in New York.

Cross-Q. 3. At the time you employed him did you see him personally, or did you write to him?

A. I think I saw him personally; I think he came on here to Washington to see me about going out to Montana.

Cross-Q. 4. Did you pay him one hundred dollars per month?

A. I suppose I did.

Cross-Q. 5. You have stated in your direct examination that you suppose he paid himself; did you personally pay him any money for his services?

A. I sent Si Huntley drafts for money every three months to run the business with out there.

Cross-Q. 6. You paid him no money as salary?

A. I sent him drafts to carry on the business with in Montana, and he paid himself out of them.

Cross-Q. 7. Do you know how much he paid himself?

A. No, I do not know how much he paid himself.

Cross-Q. 8. Did you ever examine the books to find out whether he had ever been paid any salary or not?

A. I never examined the books.

Cross-Q. 9. From 1866 to 1874 you did a very heavy business, did you not, in mail contracting?

A. No; not a very heavy business.

Cross-Q. 10. How heavy a business did you do, do you know?

A. My contracts ran from $5,000 per year to $100,000.

Cross-Q. 11. How much did your contracts amount to during those eight years?

A. I do not know how much; I never figured it up.

Cross-Q. 12. Can't you tell approximately?

A. Three or four hundred thousand dollars.

Cross-Q. 13. For the whole eight years?

A. Yes.

Cross-Q. 14. What do you mean, your profits?

A. I mean my contracts with the Post Office Department.

Cross-Q. 15. Do you mean all the contracts you held in your own name and otherwise?

A. Yes.

Cross-Q. 16. What were you paying drivers at that time?

A. Fifty dollars a month and find them.

136 Cross-Q. 17. What were you paying book-keepers?

A. I didn't employ any book-keepers.

Cross-Q. 18. What were book-keepers getting out there at that time?

A. From fifty (50) to one hundred and twenty-five (125) dollars per month.

Cross-Q. 19. During the eight years prior to 1874, what was Si's business out there?

A. He simply had charge of my books and to run and start the stages.

Cross-Q. 20. Did he have anything to do with securing mail routes?

A. No, he had nothing to do with securing mail routes.

Cross-Q. 21. Did he have anything to do with getting the routes extended or pay increased?

A. He might have got up some petitions. I do not know whether he did or not; that is all he had to do with getting the pay increased.

Cross-Q. 22. How much of your time did you spend out there during those eight years?

A. Four or five months in a year.

Cross-Q. 23. Were you not in this city a large portion of the time attending to a lawsuit you had here?

A. No.

Cross-Q. 24. Did you not have a suit here with Allman?

A. I had a suit with Allman; yes.

Cross-Q. 25. Were you not here a long time attending to that suit?

A. I was here a month or two attending to that suit.

Cross-Q. 26. Were you not here a year or two attending to it?

A. No; I was not here a year or two attending to it. I do not think the suit lasted a year or two.

Cross-Q. 27. How long is a contract term for with the Post Office Department?

A. Four years.

Cross-Q. 28. Did you and Si enter into a copartnership for the mail contracts, commencing July 1st, 1874?

A. I never entered into copartnership with Si Huntley in my life, except in three small routes.

Cross-Q. 29. What were they?

137 A. Helena to Bozeman, Montana Territory, and Virginia City to Bozeman, Montana Territory, and Bryan to South Pass, Wyoming Territory. I think there was a fourth route from Missoula to Skalkaho, Montana Territory.

Cross-Q. 30. From July 1st, 1874, to June 30th, 1878, were you not interested in a large number of mail contracts?

A. Yes; I suppose I was.

Cross-Q. 31. Who attended to the business?

A. S. S. Huntley.

Cross-Q. 32. Did he procure contracts?

A. No; he didn't procure a contract.

Cross-Q. 33. Who did?

A. I procured the contracts myself and put in the bids for them.

Cross-Q. 34. When were those bids put in?

A. In the spring of 1874, I think.

Cross-Q. 35. How many contracts did you get that you put in bids for?

A. Twenty-five or thirty—I don't know exactly how many.

Cross-Q. 36. Did S. S. Huntley secure any contracts after you left?

A. I think he secured one contract. He said he lost money on that; but it is a lie; he didn't lose money on it.

Cross-Q. 37. Did he get any routes extended or mail pay increased?

A. I do not know whether he got them extended or whether the delegate got them extended.

(All the foregoing is objected to, as immaterial, and not responsive to the examination-in-chief.)

Cross-Q. 38. Well, he had full charge of all those matters, did he not?

A. Yes.

Cross-Q. 39. What pay was he to receive for that?

A. I went into partnership with him in three or four routes.

Cross-Q. 40. You instituted suit against him, did you not, about these contracts?

A. Yes.

Cross-Q. 41. When was it you told S. S. Huntley that he could have one-half of Parker's interest in the Northwestern Stage Company and California and Oregon Stage Company for one-half of what you paid for it?

138 A. I do not remember ever telling S. S. Huntley such a thing as that.

Cross-Q. 42. What did you tell him?

A. I never told him anything.

Cross-Q. 43. Was he not to have one-half of the interest you purchased from Parker in those routes or in those companies?

A. Yes; when he paid for it.

Cross-Q. 44. Did you tell him that?

A. Yes.

Cross-Q. 45. When did you tell him that?

A. I told him that just about the time I bought the route.

Cross-Q. 46. Where did you tell him, in this city?

A. I told him when I met him in Salt Lake, I think.

Cross-Q. 47. Did you say anything to him about it before you met him in Salt Lake?

A. We had a talk at my house before we went out West, and I may have said something to him about it then.

Cross-Q. 48. Did you ever have any settlement with him for his eight years' service prior to 1874?

A. No; I suppose he paid himself right along.

Cross-Q. 49. Who was superintendent of the Northwest Stage Company?

A. William B. Morris.

Cross-Q. 50. He is dead, is he not?

A. Yes.

Cross-Q. 51. What salary did he get?

A. I think he got $4,000 a year.

Cross-Q 52. Did he not get $5,000?

A. No; I think not; I think he got $4,000.

Cross-Q. 53. Did S. S. Huntley have anything to do with the Northwest Stage Company?

A. I suppose he occupied the position I occupied when *when* I went to Europe.

Cross-Q. 54. How long were you in Europe?

A. Six or eight months.

Cross-Q. 55. Do you know A. E. Bradbury?

A. Yes.

Cross-Q. 56. You were in Salt Lake City in the summer of 1874, were you not?

A. Yes.

Cross-Q. 57. Do you remember meeting him there, at that time, at the Walker House?

139 A. Meeting who there?

Cross-Q. 58. A. E. Bradbury.

A. No; I do not remember meeting him there, though I may have met him there.

Cross-Q. 59. Did you not tell him at that time, in the Walker House, that you had sold to Si one-half of your interest in the Northwest Stage Company and California and Oregon Company, and that you hoped he would make money out of it?

A. No; I did not tell him that.

Cross-Q. 60. Did not S. S. Huntley have a half interest in the Northwest Stage Company; half of the interest you bought from Parker?

A. I say, as I said before, that I told Si Huntley he could have a half interest in the routes when he paid for it.

Cross-Q. 61. And that was at Salt Lake City, when you met him there?

A. I suppose so; yes.

Cross-Q. 62. You remember meeting him at Salt Lake City when you left here after you bought out Parker's interest, do you?

A. Yes.

Cross Q. 63. You went from Salt Lake City where, to California?

A. Yes.

Cross-Q. 64. And there you were taken sick, were you?

A. Yes; I had a stroke of paralysis there.

CHARLES C. HUNTLEY.

Subscribed and sworn to before me, this 21st day of September, 1880.

[SEAL.] BARTRAM ZEVELY,
U. S. Com'r & Exam'r in Ch'nc'y, D. C.

The witness having the foregoing deposition read over to him, desires to amend the same to this extent: that he wishes his answer to to the 43d cross-interrogatory to be taken as his answer to the 40th and 41st cross-interrogatories. BARTRAM ZEVELY,
Commissioner.

C. C. HUNTLEY.

140 FRIDAY, *October* 22, 1880.

Pursuant to notice, met at the office of Nathaniel Wilson, 635 F St. Present: Mr. Mattingly for complainant, and Mr. Wilson and J. Hubley Ashton for defendants.

Mr. NATHANIEL WILSON, being first duly sworn, was examined on behalf of defendant Charles C. Huntley.

By the Commissioner:

Q. State your name, residence, and occupation.

A. My name is Nathaniel Wilson; I reside in Washington; my occupation is that of a lawyer.

Q. Are you in any way related to the parties to this suit?

A. No.

Q. Have you any interest, direct or indirect, in the matter at issue?

A. None whatever.

The witness proceeded as follows:

I first made the acquaintance of Charles C. Huntley, one of the defendants in this case, in the early part of 1868, and acted as his counsel in the suit of Allman against Huntley, in the supreme court of the District of Columbia, from that time until concluded. The bill in that case was filed in the latter part of 1867, and the decree of the special term was passed in June, 1869. During a part of that time C. C. Huntley was here in the District of Columbia; the rest of the time he was in Montana. I continued to act as his counsel from the early part of 1868, in various matters which required legal advice, during which time he was engaged as a contractor with the United States in transporting the United States mails. Of the details of his business as mail contractor I knew nothing, and had occasion to know nothing, except in relation to this suit, and other matters incidental thereto. I was his counsel in June, 1874, at the time of the sale to him of Parker's interest in the Northwestern Stage Company.

I was present at the Arlington Hotel, in Washington, on the 27th of June, 1874, when the terms of the sale of Parker's interest were agreed upon, and prepared a rough copy of the bill of sale which

141 was executed by Parker, and which was written out by Mr. Elliott, a clerk then in my employ, and which is attached to Parker's testimony and marked Defendants' Exhibit No. 1.

At that time Mr. S. S. Huntley, the plaintiff, was not present, nor was he in the city. I had known him for some time previously, but only as Mr. C. C. Huntley's cousin, and as in his employ as bookkeeper or manager, and never knew or heard of his having any interest in the business of Charles C. Huntley; nor was I at that time informed by any person of any interest held or expected to be held by him in the purchase of Charles C. Huntley made of Mr. Parker.

At that time, viz., in June, 1874, Charles C. Huntley was under the physician's care, but his mind and power of speech and move-

ment were perfect and unimpaired, and he was then, as he had been since I first knew him, a man of remarkable physical energy and business activity. After the bill of sale was made by Parker, Charles C. Huntley went to New York, and I didn't see him again till September, 1874. In September, 1874, I went to see him at the Arlington Hotel, this city, and found him suffering from paralysis, and in a physical and mental condition that made it impossible for me to have any conversation with him on business. He was in bed. My recollection now is that he first came here in September from New York, but it may have been in October. At any rate, he was then under the care of Drs. Keyes and Van Buren, in New York. Mr. S. S. Huntley was here, and I think his father was here, though I didn't see him. He went away and came back again in November or December. Mr. Bradley Barlow was then here, and I had some conversation with Mr. Si Huntley and Mr. Barlow as to the condition of Mr. Huntley's business.

Previous to December, 1874, I think in October or November, I had paid over to S. S. Huntley a very considerable sum of money which came into my hands, belonging to C. C. Huntley—something over $10,000—I do not remember exactly what, and was at that time informed by him that he intended to take charge of Mr. C. C. Huntley's affairs and business, and do the best that could be done for him. That payment was made to him as being the moneys of C. C. Huntley, which he, S. S. Huntley, was authorized to receive for and on his, C. C. Huntley's, behalf, and as his, C. C. Huntley's, agent.

142 The money had been placed in my hands by C. C. Huntley, and the profits were paid over, as I have stated. In December, and in the conversations which I had with Mr. Barlow and S. S. Huntley, they stated that they thought it best he should go to Europe, to some German baths, I think, and I have no doubt I expressed my assent. I was also informed by them that a power of attorney had been given, made by C. C. Huntley to Mr. Barlow, giving him authority over the business of the Northwestern Stage Company, and that a power of attorney had been given to S. S. Huntley, giving him full authority and control over all the business and personal property of C. C. Huntley. Neither of these powers of attorney was shown to me at the time, and I didn't see them till long afterwards.

Up to the time of C. C. Huntley's departure for Europe, which was in January, 1875, and after his departure for California, in June, 1874, I had had no conversation whatever with C. C. Huntley as to his business, and when I saw him in September, October, November, and December, 1874, and up to the time of his departure for Europe, he could not talk so that I could understand him, and was not able to give me any directions about his businesss, if he had desired to do so. He walked with great difficulty, and no one could understand what he said, except those accustomed to hearing him constantly; and he was not in any condition to transact business. He returned from Europe after an absence of some months. During his absence all his money affairs were in the hands of S. S. Huntley, and he transmitted moneys to him from time to time. My impres-

sion is that some moneys were sent to him by me, but of that I am not sure. He returned from Europe somewhat better, and I was able to understand him when he spoke, and after that he went to the Sandwich Islands.

By Mr. ASHTON:

Q. What did he go there for?

A. He went there for his health.

Q. He went to Europe twice, did he not?

A. Then he came home and went to Europe again. The date of this second visit to Europe I do not remember. During all that time he paid no attention to his business, and left all his affairs, except his real estate, which he owned in common with Mr. Barlow, to Mr. S. S. Huntley.

143 By Mr. ASHTON:

Q. Were you counsel then for S. S. Huntley?

A. Referring to S. S. Huntley's testimony, I wish to say that from my first acquaintance with Mr. C. C. Huntley until the present time I have acted exclusively as C. C. Huntley's attorney and counsel, and never supposed that I acted in any respect as attorney for S. S. Huntley. All the compensation that I have ever received has been paid to me by C. C. Huntley; I have never received a fee from S. S. Huntley; never had any relations with him as counsel, and all my transactions and interviews with him were based upon the supposition that he was the representative of C. C. Huntley.

My recollection is that in February, 1876, it was thought desirable to have a settlement with Mr. Barlow as to the operations of the Northwestern Stage Co. up to that time, and Mr. Barlow and S. S. Huntley and C. C. Huntley met in my office, and Mr. Barlow presented his accounts.

They related to matters of which I had no knowledge whatever, and I did not undertake or assume to give any advice, except as I now explain. Mr. Barlow claimed some allowances, to which C. C. Huntley objected. The reasons of the objection and the nature of the claims of Barlow for the credit I did not understand, and when C. C. Huntley declined to sign the note that represented the balance due Barlow at that time, I stated to Mr. S. S. Huntley that if he thought it proper and best to do so, as the representative of C. C. Huntley, and holding his power of attorney, he should exercise his best judgment and do what he thought was right, and sign the notes if he thought proper. C. C. Huntley was not present when the notes were signed.

He left the room, refusing to sign them. At the time the notes were signed, it was explained by Mr. Barlow that although the business of the company had been a losing one up to that time, the future profits to be realized would pay those notes. After the notes were signed, Mr. Barlow stated that they ought to be secured, and a deed of trust was executed by C. C. Huntley alone on all C. C. Huntley's real estate in the District of Columbia which he alone owned, and that deed of trust still remains in force to this day.

The deed was executed by C. C. Huntley and his wife,
144 and was in trust to secure these notes and some others. At that time, I remember that I was anxious that some definite understanding should be arrived at as to the interest of S. S. Huntley in the business, and urged that something should be done to settle it. S. S. Huntley did not, at that time, claim that the stock or the one-half interest of Parker had been purchased for him, and that he was to have it without paying for it. All that was communicated to me by him or C. C. Huntley in relation to his interest was that he had an interest in the profits that might be realized from the business; and as up to that time there had been nothing but losses, I didn't understand (tho' I thought there should be a definite understanding) how the accounts were ultimately to be settled. I have no recollection whatever of ever having had any conversation, or hearing any conversation, with S. S. Huntley, or of hearing any conversation between S. S. and C. C. Huntley as to the value of S. S. Huntley's services to C. C. Huntley, or that he ever named any figure at which he estimated their worth, nor did I ever hear of any proposition to give up his interest if C. C. Huntley would pay him what his services were worth, nor did I ever hear him say that he had not been paid for services he had rendered to C. C. Huntley. If any such conversation occurred, and if C. C. Huntley had ever admitted that S. S. Huntley's services were worth $45,000, and that he had not been paid for them, I certainly should have remembered such a conversation.

After that settlement, in April, I think, in the year 1876, an effort was made by Sanderson to buy out Huntley's interest in the Oregon and California Stage Companies, and a sale was made, Sanderson buying out the interest and paying therefor the sum of $20,000. Sanderson, instead of paying the money for the purchase, turned it over to Mr. Barlow, and Mr. Barlow, on the first of April, 1876, gave his receipt, which is in my handwriting, and which is in evidence; and at the same time a paper was executed, which is also in my handwriting, signed by J. S. Sanderson, releasing S. S. Huntley and C. C. Huntley from all obligations in relation to that line, the Northwestern Stage Company. Those two papers in my handwriting were not written by me with any knowledge or information received from any person that S. S. Huntley was the owner of one-half of all the interest standing in C. C. Huntley's
145 name in the Oregon and California and Northwestern Stage Companies, but was written with the information that S. S. Huntley did have, or claimed to have, some interest in those companies, the nature of which I was not then informed. I did not know until the bill in this case was filed that S. S. Huntley claimed to be the owner of one-half the interest of C. C. Huntley in those two cases, by reason of the services he had rendered to C. C. Huntley prior to the first day of July, 1874. The general power of attorney given by C. C. Huntley to S. S. Huntley I have seen, but have not got it in my possession. It was sufficient, according to my recollection of it, to authorize S. S. Huntley to act for and represent C. C. Huntley in all matters pertaining to his business and personal

estate. I know that the sale to Sanderson was made after consultation with me. I advised it strenuously, because at that time the Oregon and California Stage Company had been losing money.

By Mr. ASHTON:

Q. How was it made?

A. Simply by saying to Mr. Sanderson that the sum of $20,000 would be received in respect to the interest of C. C. Huntley, and probably of S. S. Huntley. Whether a bill of sale was to himself or not I do not recollect.

Q. Was C. C. Huntley here at that time?

A. I do not think he was here; my recollection is that he was not here.

Q. Did you ever have a copy of the power of attorney which is marked S. S. H., No. 1?

A. I never did until after the institution of this suit; never saw it until then.

Q. Were you ever consulted about it?

A. I never was consulted about it.

Q. Were you present at its execution?

A. I was not present at its execution; didn't know of its execution until after it had been executed.

Q. How long before the execution of that power of attorney had you seen C. C. Huntley?

A. I had seen him probably within a very few days.

Q. Where?

A. At the Arlington Hotel.

Q. He went to Europe in January?

A. He went to Europe in January, 1875.

146 Q. When he returned, where did he go?

A. He went to Europe, and was gone, I think, six months; then he came back and went to the Sandwich Islands; I cannot remember when he came back from the Sandwich Islands without referring to my memorandum.

Q. What did he make these travels for?

A. He was traveling rather for the benefit of his health; he was restless and not in a condition to do any business; he went hoping he would be benefited by a sea voyage.

Q. Was his condition in 1874 materially different from what it was when he was taken sick?

A. He had improved somewhat, but up to the time he went to Europe, which was the first of January, 1875, his condition was not materially improved, so far as ability to do any work was concerned. What I mean to say is, that up to the time of his departure for Europe I couldn't have any intelligent business conversation with him.

(All the foregoing testimony, except so much thereof as is directly responsive to the statements made by S. S. Huntley in his deposition relative to Mr. Wilson's connection with this matter, is objected to, as incompetent.)

Adjourned, subject to notice.

FRIDAY, *Oct.* 29, 1880—11 a. m.

Pursuant to adjournment, met at office of Nathaniel Wilson, 635 F street.

Present: Mr. Wm. F. Mattingly, solicitor for complainant; J. Hubley Ashton, for defendants, and witness NATHANIEL WILSON, who was cross-examined by Mr. MATTINGLY as follows:

Cross-Q. 1. Can you state, during the pendency of the Allman suit, as stated by you in the latter part of 1867, until June, 1869, how much of his time C. C. Huntley spent in Montana?

A. He was away from here a great deal; he went to Montana to superintend the taking of testimony in that case, and was gone several months; how much of the time he was there after the suit was first brought I do not remember.

Cross-Q. 2. At the time he went to take testimony in that case, was not that the sole occasion of his visit?

A. I do not remember.

147 Cross-Q. 3. Do you remember any other occasion during the pendency of that suit when he was in Montana?

A. He was absent from the city a number of times, but I have no knowledge where he was.

Cross-Q. 4. After that time and prior to June, 1874, do you know how often he was in Montana?

A. I do not; I only saw him occasionally.

Cross-Q. 5. You state that in June, 1874, at the time of the purchase from Parker, S. S. Huntley was not in the city; do you know where he was and the occasion of his absence?

A. I do not; he went away, I think, a short time before that; but when he went away and where he went, I do not know.

Cross-Q. 6. Did C. C. Huntley say anything to you about his having left to look after the business of the Northwestern Stage Co.?

A. He did not.

Cross-Q. 7. Did you know from any source that he had gone out there to start the routes?

A. I did not know up to that time that he had anything to do with the stage companies.

Cross-Q. 8. At that time did you know that he and C. C. Huntley were interested in a large number of other routes?

A. I did not; I knew that C. C. Huntley was running a great many routes, but I did not know that S. S. Huntley had any interest in any of them.

Cross-Q. 9. At the time of the purchase of Parker's interest referred to did you know that C. C. Huntley was making this purchase in part for Mr. Bradley Barlow?

A. I knew that Mr. Barlow was to be the maker or indorser of the notes and that he had some interest, but what it was, I did not know; he told me he had some interest.

Cross-Q. 10. Did either C. C. Huntley or Mr. Barlow tell you at that time that C. C. Huntley was making this purchase in part for Mr. Barlow?

A. I was not so informed by either of them; I did not know of it.

Cross-Q. 11. Was Mr. Barlow your client at that time?

A. He was not.

148 Cross-Q 12. Did Mr. Barlow at that time tell you that C. C. Huntley was purchasing this interest from Parker in part for his (Barlow's) benefit and in part for S. S. Huntley's benefit, so that S. S. Huntley should have the same interest which he (C. C. Huntley) had?

A. He did not; the name of S. S. Huntley was not mentioned by anybody at that time.

Cross-Q. 13. Were you present during the negotiations for this purchase between the parties?

A. I think the negotiations had been almost concluded before I was sent for, and the only thing remaining to be settled after I got there were the terms of payment.

Cross-Q. 14. Were you aware at that time that the parties had secured the routes for the ensuing contract term which had been theretofore run by the Northwestern Stage Company prior to opening negotiations with Parker?

A. I did not know anything about it.

Cross-Q. 15. Then you knew nothing of S. S. Huntley's connection with that matter in securing those routes?

A. Nothing whatever; I did know that he was engaged in the preliminary arrangements and preparation of bids, &c., but what they were, I did not know.

Cross-Q. 16. Can you state at what time in September, 1874, you saw C. C. Huntley in the Arlington Hotel?

A. I cannot.

Cross-Q. 17. On page 4 of your deposition you state "Mr. S. S. Huntley was here, and I think his father was here, though I did not see him."

A. I meant C. C. Huntley's father.

Cross-Q. 18. Was C. C. Huntley here at the Arlington in October, and then again in November?

A. No; I do not think he was; I am not sure; he was here in September; he must have stayed part of September and October.

Cross-Q. 19. Then left and returned again?

A. He then left and returned again just before sailing for Europe in December; I did not go to see him; I had no occasion to see him more than once or twice before he went to Europe.

Cross-Q. 20. Did you not know that one reason why S. S. Huntley and Mr. Barlow desired that C. C. Huntley should go to Europe was to avoid his marriage with some lady in New York?

A. I know that S. S. Huntley informed me of what he
149 apprehended would take place; I certainly thought it a very unwise thing for C. C. Huntley to do under the circumstances, and I believed, and still believe, that his going to Europe was a wise thing for him to do at that time.

Cross-Q. 21. Did you see Mr. Bradley Barlow when C. C. Huntley was here, in 1874?

A. I do not remember seeing him at all at that time before C. C.

Huntley departed for Europe, although I probably did. If I did I certainly had no conversation with him about C. C. Huntley's business that I remember.

Cross-Q. 22. In talking over the propriety of C. C. Huntley's going to Europe at that time, did Mr. Barlow say anything about his desire to have some paper executed by C. C. Huntley and the other parties in interest showing what their respective interests were in the Northwestern, California, and Oregon Stage Cos.?

A. Not that I remember.

Cross-Q. 23. After C. C. Huntley left, did Mr. Barlow inform you that he had had such a paper executed?

A. I knew he had a power of attorney from C. C. Huntley relating to the Northwestern Stage Company's business, and I knew, or was informed, that Si had a power of attorney from C. C. Huntley relative to the management of C. C. Huntley's general business. But the precise nature of those powers I did not know. I never saw them until this suit was instituted.

Cross-Q. 24. The power of attorney to which you allude to Mr. Barlow is a separate and distinct paper from Exhibit S. S. H., No. 1?

A. Not that I know of. I did not know of any other paper whatever.

Cross-Q. 25. Did he not have a power of attorney which he had to file in the Post Office Department in order to collect the mail pay of that company?

A. Not that I know of. He must have had powers of attorney from everybody who held contracts which were for the benefit of the Northwestern Stage Company, but whether any of those routes were in the name of C. C. Huntley I do not know. If there were, then undoubtedly he must have had powers of attorney from C. C. Huntley relating directly to those routes.

Cross-Q. 26. Were any of those contracts in the name of the Northwestern Stage Company?

150 A. I do not think they were. I think they were in the names of individuals and controlled by powers of attorney.

Cross-Q. 27. Then the powers of attorney to Mr. Barlow to collect the mail pay must have been powers of attorney from whatever individuals in whose name the contracts were?

A. Yes; undoubtedly.

Cross-Q. 28. Did not S. S. Huntley consult and advise with you constantly about all matters?

A. There was not any occasion to consult with me or advise with me, except possibly about Charlie's going to Europe; but as to the management and details of his business I had nothing whatever to do. I gave no advice and had no knowledge.

Cross-Q. 29. Do you remember his consulting with you in 1875, in August, about obtaining some letters from a party in New York?

A. Yes; and I referred him to somebody in New York; that was relating to the marriage embroglio.

Cross-Q. 30. Did he not consult and advise with you relative to the sale to Sanderson?

A. He did.

Cross-Q. 31. So far as you know, when he had occasion to consult counsel and take legal advice, did he not come to you?

A. I think probably he did, but so far as I know there was no occasion for any legal advice. The greater part of the business, the management of the contracts, routes, and carrying of the mails, were matters in which and about which I was not competent to give any advice.

Cross-Q. 32. At the time of the settlement with Barlow in Februruary, 1876, of the matters relating to the Northwestern Stage Company, before the matters connected with that settlement were taken up on the occasion alluded to by you when these parties were all present in your office, was not a settlement had between Barlow and C. C. Huntley relating to some of their private transactions?

A. I think that Barlow and C. C. Huntley had various matters relating to real estate, and other interest which they had in common, and which were in some way settled at the same time; that is, the amount due Barlow was ascertained and agreed upon.

151 Cross-Q. 33. Did not C. C. Huntley at that time give his note to Mr. Barlow for $60,000?

A. I do not think he did at that time, on that day.

Cross-Q. 34. After they closed up their private matters, and it came to signing these notes, which were for 27,000 and odd dollars, when C. C. Huntley refused to sign, did he not say that he had signed notes enough, and would not sign any more?

A. He certainly said he would sign no more, and he may have said that he had signed notes enough, but the reason of his refusal to sign the notes was his objection to certain charges that Barlow had made in his account.

Cross-Q. 37. Did not you and Mr. Barlow both, on that occasion, tell S. S. Huntley that if he signed them and thought it was right it would be the same as if C. C. Huntley signed them?

A. I certainly advised S. S. Huntley to sign the notes if he thought it was right. The effect of signing, I do not think I stated or said anything about.

Cross-Q. 38. Have you any positive recollection of stating to S. S. Huntley on that occasion that if he thought it best to do so as the representative of C. C. Huntley, and having a power of attorney from him, that he should do what he thought best, or using language of similar import?

A. I remember telling him that, knowing all the circumstances, which I did not, he must exercise his own judgment about signing the notes, and that as representing C. C. Huntley he must exercise his own judgment in behalf of or in representing C. C. Huntley. The precise words that were used I do not recollect, nor do I remember whether any reference was made in words to any power of attorney.

Cross-Q. 39. The notes signed on that occasion were these notes for 27,000 and odd dollars?

A. They were.

Cross-Q. 40. When was the deed of trust executed by C. C. Huntley securing those notes to Mr. Barlow?

A. The deed of trust was executed on the 11th day of August, 1876, recorded in liber 823, folio 465, copy of which is filed herewith and marked Exhibit N. W., No. 1. Prior to that time C. C. Huntley and Bradley Barlow owned in common a number of tracts of land in the District of Columbia, and on that day, the 11th
152 day of August, 1876, made a division and exchanged deeds, and on the same day this deed of trust was given, which secures the notes referred to as having been given by C. C. and S. S. Huntley. That deed of trust has never been released.

Cross-Q. 41. Was not another objection to making that deed of trust because Mr. Barlow had overlooked the fact that the $20,000 received by him, under the sale to Sanderson, had been received by him as a payment on account of those notes for 27,000 and odd dollars, and that he had given C. C. H. credit for that $20,000 on private account?

A. He required the deed of trust to be given, and my recollection is that it was agreed to be given at the time the notes were given, but it could not be made out then, because there had been no division of the property held in common.

Cross-Q. 42. Have you no recollection of the fact that Barlow had given credit to C. C. Huntley for this $20,000 on his private account?

A. Yes; I think he had.

Cross-Q. 43. Do you remember that independent of Mr. Barlow's testimony in this cause, or did that refresh your memory?

Cross-Q. 44. I knew undoubtedly at the time, but I do not remember now how the credit was given. I remember distinctly his stating to me that when he gave that credit to C. C. Huntley he had forgotten the credit to Si.

Cross-Q. 45. In S. S. Huntley's consultation with you relative to the sale to Sanderson, in his instructions, or as expressing his wishes as to the paper which he desired drawn up, did he not state that he wanted C. C. Huntley and himself released from all claims, so that no back bills should come against him?

A. Undoubtedly, and it was intended that, as I understood it, that $20,000 should be applied on those notes.

Cross-Q. 46. When and where did you see the power of attorney from C. C. Huntley to S. S. Huntley of which you have spoken?

A. My recollection is thot I saw it about the time I saw the power of attorney from C. C. Huntley to Bradley Barlow, and that was not long before or long after the beginning of this suit.

Cross-Q. 47. By the power of attorney to Barlow you mean Exhibit S. S. H., No. 1?

153 My recollection is not very distinct about that, but I do recollect that S. S. Huntley told me that he had a general power of attorney from C. C. Huntley, and everything that I said or did was upon the supposition that he had such a power of attorney to represent C. C. Huntley: as, for instance, paying to him (Si), as I have stated, a considerable sum of money belonging to C. C. Huntley, and recognizing him in every respect as C. C. Huntley's representative and duly-authorized agent.

Cross-Q. 48. In making out the papers for the sale to Sanderson

did you not make a bill of sale in the name of C. C. Huntley and S. S. Huntley?

A. I remember the release that is in evidence, and if a bill of sale was executed I have no doubt it was executed in the name of C. C. & S. S. Huntley; I have no recollection of their executing any such paper.

Cross-Q. 49. Were you not under the impression for a long time that the interest that C. C. Huntley bought of Parker, which S. S. Huntley claimed was for him, cost C. C. Huntley $75,000?

A. I know that its cost was the sum specified in the bill of sale, which was $75,000; I did not know at that time, nor until sometime afterwards, that a part of the interest then purchased was sold to Bradley Barlow; but it is true that the purchase by Huntley cost $75,000, and that the part retained after making sale to Barlow cost him at the same rate.

Cross-Q. 50. Were you not aware that from 1874–1878 S. S. Huntley was making payments of money to C. C. Huntley from time to time?

A. Yes, undoubtedly; he was sending him money; he sent him money when he was abroad.

Cross-Q. 51. Did you not know that he was paying him one-half of the moneys received by him from routes that he was engaged in?

A. I did not.

Cross-Q. 52. Have you no recollection of any statement made at the time that he was sending him one-half of those amounts?

A. Towards the latter part of the term ending June 30, 1878, I did know that he was sending him, paying him a portion of the money received from mail routes; not from the Northwestern
154 Stage Company, however; and I do know that some time in 1877, I think, C. C. Huntley undertook to revoke certain powers of attorney that were given to S. S. Huntley, and thereupon S. S. Huntley turned over to C. C. Huntley certain routes—four, I think—on which, from that time out, C. C. Huntley collected all the pay, paid the sub-contractors, and retained the balance himself.

Cross-Q. 53. Did not S. S. Huntley during that period exhibit to you books kept by him showing that the routes controlled by him were run in the joint interest of S. S. & C. C. Huntley?

A. I do not think any books were shown to me until after the bill was filed; then an injunction was obtained.

Cross-Q. 54. The moneys received by C. C. Huntley from these routes of which you speak, S. S. Huntley charged him with one-half of the amount, did he not?

A. He did, in rendering his account.

Cross-Q. 55. And that account was allowed?

A. It was.

Cross-Q. 56. The deed of trust, a copy of which you have put in evidence, you say has never been released; have the notes therein mentioned been surrendered?

A. They have not.

Cross-Q. 57. You will please produce the note therein mentioned as dated August 11th, 1876, for $10,000?

A. I have not got it.

Mr. MATTINGLY: This notice is given to you as attorney for Mr. Barlow; I desire to call your attention to the fact that this deed of trust, in describing that note as well as others, speaks of them all as signed by C. C. Huntley and S. S. Huntley, and that Mr. S. S. Huntley denies having signed said note of August 11, 1876.

WITNESS: I do not think he did sign it; the statement in the deed of trust as to the $10,000 note, dated August 11, 1876, must be a mistake; it was executed by C. C. Huntley alone, and related solely to his private account.

Adjourned, subject to notice.

WEDNESDAY, *Nov.* 3, 1880, 4 P. M.

Met pursuant to adjournment.

Present: Counsel as before, and witness Nath. Wilson, who was further cross-examined by Mr. Mattingly.

Cross-Q. 58. Did not S. S. Huntley, in March, 1877, and at
155 other periods in that year, submit to you written statements, showing the equal interest of C. C. Huntley and himself in a large number of postal routes?

A. Before the end of the quarter which ended June 30, 1877, C. C. Huntley did object to the payment to S. S. Huntley of mail pay on various routes in the Post-Office Department. Up to that time S. S. Huntley had drawn all the mail pay on all the routes which C. C. Huntley owned or was interested in, and C. C. Huntley requested me to stop it, and I think he made some attempt to get some of the powers of attorney revoked that he had given to Si. It is quite probable that at that time S. S. Huntley did show to me a schedule of the routes on which he collected the pay and in which he claimed an interest. I know that the result was, that on four of the routes, as I have already stated, C. C. Huntley was substituted attorney and permitted to draw the mail pay on the contracts which were in his own name. I do not think that at that time there was any other account presented to me of the receipts and disbursements of mail routes in which C. C. Huntley and S. S. Huntley were interested. Afterwards there was shown to me a book which contained an account of the mail pay received and the disbursements made; but I do not think that that was shown to me until after the bill was filed.

By Mr. ASHTON: What bill?

A. The bill in which C. C. Huntley is complainant and S. S. Huntley defendant. This bill was for a settlement of partnership accounts in relation to routes in which they were interested, but which had nothing to do with the Northwestern Stage Company. I have somewhere a schedule of the routes that S. S. Huntley handed me about that time. I have now (producing a paper) what I believe to have been that schedule of routes handed to me at the time mentioned, by S. S. Huntley, which don't show any interest except in the contractors.

(This paper is filed and marked Defendants' Exhibit No. 1.)

Cross-Q. 59. When was that paper handed to you?

A. It was, I think, in the spring of 1877.

Cross-Q. 60. From whom did you obtain it?

A. My recollection is that it was given to me by Mr. S. S. Huntley.

Cross-Q. 61. The four routes you speak of were those in
156 which C. C. Huntley had the powers of attorney to S. S. Huntley withdrawn, were they not?

A. I think so.

Cross-Q. 62. In the proceedings in the suit to which you have referred brought by C. C. against S. S. Huntley for a settlement of partnership accounts, was it not conceded that they were equally interested in the routes mentioned in this exhibit which you have filed, and which is marked "Defendants' Exhibit No. 1"?

A. I answer that in this way: The proceedings in that case will show that the original bill was filed, alleging that C. C. Huntley and S. S. Huntley were partners in all the routes that are described in the schedule which has just been shown. After the bill had been filed C. C. Huntley complained to me that I had misunderstood him, and that he had signed the bill and shown to it without having understood its terms in respect of all routes that are named in the bill, and that the fact was that S. S. Huntley was only interested as a partner with him in four or five routes that are therein named, and insisted on filing an amended bill stating correctly what routes were embraced in the partnership. But subsequently, at my earnest request and upon my advice, a stipulation was made or an order passed recognizing S. S. Huntley as interested as a partner with him in all of said routes.

Cross-Q. 63. Prior to 1877, did not S. S. Huntley have several interviews with you relative to frequent demands on him from C. C. Huntley for advancements of money, and did not S. S. Huntley represent to you that C. C. Huntley's interest in the concern would not justify the payment of so much, as his share of the profits would not equal the demands he was making? And was it not agreed upon between you and S. S. Huntley that he should advance $500 per month for C. C. Huntley out of his share of the profits?

A. There were conversations and interviews in regard to the means necessary for C. C. Huntley's subsistence. All his property, except his real estate, was in the possession and under the control of S. S. Huntley, and all the moneys that were obtained or could be obtained, for C. C. Huntley's support, were necessarily obtained through S. S. Huntley, and it was, therefore, necessary to obtain money for him by payments made by S. S. Huntley; and it
157 was stated that the business of that time was not profitable enough to meet the demands of C. C. Huntley, and it was agreed that there should be paid to C. C. Huntley $500 per month, about, but that money was not to be paid out of any moneys received from or pertaining to the Northwestern Stage Company, and had nothing whatever to do with the business of that company.

Cross-Q. 64. Was not that money to be paid out of C. C. Huntley's share in the profits arising from the contracts specified in the preceding answer?

A. What C. C. Huntley's share was I did not know, and never undertook to determine or ascertain. The money was advanced and the adjustment of their mutual accounts was left for future consideration. I had no means of knowing what were the respective interests of C. C. and S. S. Huntley.

Cross-Q. 65. Look at the paper now handed (marked by the examiner Defendants' Exhibit No. 2), and state whether that was not handed you by S. S. Huntley in March, 1879.

A. I recognize my handwriting on the envelope. I recognize that paper. It was presented to me a short time before the bill was filed, I think, or at the time of the filing of the bill; that related to the accounts between C. C. and S. S. Huntley on the routes already referred to, and the bill that I have already spoken of was filled upon the supposition that those accounts were correct.

Cross-Q. 66. Can you state that that statement of account, Defendants' Exhibit No. 2, was not handed you about the time of its date, March, 1879?

A. It is possible. It was about the time of the revocation of the powers of attorney that had been given to S. S. Huntley, and to which I have referred.

Cross-Q. 67. What property of C. C. Huntley's did S. S. Huntley have control of other than that connected with these routes?

A. Whatever property he had in the way of money. As I have stated, I transmitted to him between ten and fifteen thousand dollars of the money of C. C. Huntley which came into my hands, and whatever money was in bank he also had control of, and whatever moneys were on deposit in Montana, and all the business connected with the mail routes.

NATH'L WILSON.

Adjourned to Thursday, November 4, 1880, 4 p. m.

158 THURSDAY, *Nov.* 4, 1880—4 p. m.

Met pursuant to adjournment. Present: Respective counsel, as before.

Examination of witness Nathaniel Wilson closed.

Defendant gives notice that his case is closed, and offers in evidence the record in the case of Charles C. Huntley *v.* Silas S. Huntley, Equity, 6075.

This record is filed herewith, and made part of defendants' testimony, and is marked Defendants' Exhibit No. 3.

Depositton of Charles C. Huntley in Surrebuttal,

MARCH 12, 1881.

Pursuant to notice, met at the office of Nath'l Wilson, 635 F street.

Present: William F. Mattingly, for complainants, and Nathaniel Wilson, for defendants.

By Mr. WILSON:

Q. 1. In his deposition in rebuttal, the complainant, S. S. Huntley, has stated that four copies were made of Exhibit S. S. H., No. 1,

one of which was for you. Was any copy given to you at that time?

A. No, I never saw a copy until after I commenced my suits against Si.

Cross-Q. 2. What is Exhibit S. S. H., No. 1?

A. It is the power of attorney I gave to Barlow.

Cross-Q. 3. Have you looked among your papers to see if you have a copy?

A. I have looked among my papers; I have not got a copy, and never had a copy.

C. C. HUNTLEY.

The witness, having read over the foregoing testimony, says that his answer to the 19th cross-interrogatory has been incorrectly recorded. He did not say in reply to said interrogatory that he did not go to see Charles C. Huntley in December, before the said Huntley sailed for Europe, but that he did see said Huntley once or twice in said month of December, while the said Huntley was at the Arlington Hotel.

[SEAL.] BARTRAM ZEVELY,
U. S. Com'r and Examiner in Chancery,
Dist. of Columbia.

159 EXHIBIT N. W., No. 1.

CHARLES C. HUNTLEY *to* NATHANIEL WILSON. } No. 6558. Equity. Trust.

Copy. Liber No. 823, folio 465, *et seq.*

Recorded August 19th, 1876, 11 a. m.

This indenture, made this eleventh day of August, in the year of our Lord one thousand eight hundred and seventy-six, between Charles C. Huntley and Rose Margaret Huntley, his wife, of the city of Washington, District of Columbia, of the first part, and Nathaniel Wilson, of the same place, of the second part.

Whereas the said Charles C. Huntley and S. S. Huntley are indebted unto Bradley Barlow, of St. Albans, Vermont, in the sum of thirty-seven thousand seven hundred and fifty-eight dollars and five cents ($37,758.05), for which said amount the said Bradley Barlow holds the four promissory notes of the said Charles C. Huntley and S. S. Huntley, payable to the order of the said Bradley Barlow, on demand, with interest at the rate of ten per cent. per annum until paid, and being for the amounts and bearing date, respectively, as follows: Two of said notes being for the sum of ten thousand dollars each, payable as aforesaid, and dated February 1st, 1876; one of said notes being for the sum of seven thousand seven hundred and fifty-eight 5-100 dollars, payable as aforesaid, and dated February 1st, 1876, and one of said notes being for the sum of ten
160 thousand dollars, payable as aforesaid, and dated August 11th, 1876. And whereas the said Charles C. Huntley is desirous

of securing the payment of the said notes, and each of them, when payment thereof shall be deman-ed, with all interest due and to become due, and all proper costs:

Now, therefore, this indenture witnesseth that the said parties of the first part, for and in consideration of the premises aforesaid, and further the sum of one dollar, in lawful money of the United States, to them in hand paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, and conveyed, and do by these presents grant, bargain, sell, alien, release, and convey, unto the said party of the second part, his heirs and assigns, all that certain piece or parcel of ground situate and lying in said city of Washington, District of Columbia, being known and described as original lot numbered eleven (11), in square numbered one hundred and ninety-four (194), being the same lot conveyed to the said Bradley Barlow and Charles C. Huntley by Joseph W. Parker *et ux.*, by deed dated the 19th day of July, 1876, and recorded in liber
161 690, folio 69, one of the land records of the District of Columbia. Also that certain piece or parcel of ground situate and being in said city of Washington, and known and described as lot thirteen (13), in a subdivision of square numbered one hundred and ninety-four (194), made by the Columbian College, James Miller, and Joseph Abbot; said lot having a frontage on Sixteenth street west of twenty-three feet (23 ft.) nine inches (9 in.) by a depth of one hundred feet (100 ft.) to a four-foot (4-ft.) alley, being the same piece or parcel of ground conveyed to the said Bradley Barlow by Samuel E. Slater *et ux.*, by deed dated May 28th, 1872, and recorded in liber No. 685, folio 53, one of the land records of the District of Columbia. Also that certain piece or parcel of land being and situate in said city of Washington, and known and described as lot numbered fourteen (14), in Merrick's subdivision of the south part of square numbered one hundred and eighty-one (181), being the same piece or parcel of ground conveyed to the said Charles C. Huntley by Benjamin F. Lighty *et ux.*, by deed dated the 11th day of July, 1872, and recorded in liber 706, folio 85, one of the land records of the District of Columbia. Also those certain pieces or parcels of ground
162 situate and being in said city of Washington, and known and described as the north half of lot numbered forty-eight (48), and all of lot numbered thirty-three (33), in B. U. Keyser's recorded subdivision of original lots numbered twenty-one (21), twenty-two (22), twenty-three (23), twenty-six (26), twenty-seven (27), and twenty-eight (28), in square numbered one hundred and eighty-three (183), being the same pieces or parcels of ground conveyed to the said Bradley Barlow and Charles C. Huntley by William W. Dungan *et ux* and James Barwood, by deed dated the 26th day of February, 1873, and recorded in liber No. 707, folio 492, one of the land records of the District of Columbia. Also those certain pieces or parcels of land situate in said city of Washington, known and described as lots numbered fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), and twenty-

two (22), in the subdivision of square numbered one hundred and ninety-three (193), made by James E. Fitch *et al.*, and recorded May 1st, 1870, being the same pieces or parcels of ground conveyed to the said Bradley Barlow by Augustus S. Campbell, by deed dated May 1st, 1874, and recorded in liber 752, folio 160, one of the land records of the District of Columbia. Also that certain piece or parcel of ground situate and being in said city of Washington, known and described as lot numbered fifty-two
163 (52) in the subdivision of square numbered one hundred and seventy-nine (179), being the same lot conveyed to the said Bradley Barlow and Charles C. Huntley by William H. Plunkett *et ux.*, by deed dated January 17th, 1873, and recorded in liber 702, folio 197, one of the land records of the District of Columbia. Also that certain piece or parcel of land being and situate in said city of Washington, and known and described as lot numbered seventeen (17) in Davidson's subdivision of square numbered two hundred and twenty (220), being the same piece or parcel of ground conveyed to the said Charles C. Huntley by James Wiles, by deed dated the 2d day of September, 1875, and recorded in liber No. 810, folio 272, one of the land records of the District of Columbia.

Together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in any wise appertaining, and all the estate, right, title, interest, and claim either at law or in equity or otherwise however of the said parties of the first part of, in, to, or out of the said pieces or parcels of ground and premises.

To have and to hold the said pieces or parcels of ground and premises and appurtenances unto and to the use of the said
164 party of the second part, his heirs and assigns, in and upon the trusts nevertheless hereinafter mentioned and declared, that is in trust to permit the said Charles C. Huntley, his heirs or assigns, to use and occupy the said described premises, and the rents issues, and profits thereof to take, have, and apply to and for his sole use and benefit until default be made in the payment of said, notes, or either of them, or any proper cost, charge, commission, half commission in and about the same. And upon the full payment of all of said notes and the interest thereon, and all other proper costs, charges, commissions, half commissions, and expenses at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said Charles C. Huntley, his heirs or assigns, at his or their cost. And upon this further trust that upon default being made in the payment of the said notes or either of them, or any proper cost, charge, commission, half commission, or expense in and about the same, then and at any time thereafter, to sell the said pieces or parcels of ground and premises at public auction upon such terms and conditions and at such time and place and after such previous public advertisement as the said party
165 of the second part or his heirs in *in* the execution of this trust shall deem advantageous and proper, and to convey the same in fee simple to and at the cost of the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase-

money and of the proceeds of said sale or sales; first, to pay all proper costs, charges, and expenses, and to retain as compensation a commission of five per cent. on the amount of the said sale or sales; secondly, to pay whatever may then remain unpaid of the said note and the interest thereon, whether the same shall be due or not; and lastly, to pay the remainder, if any, to said Charles C. Huntley, his heirs or assigns.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

CHARLES C. HUNTLEY. [SEAL.]
ROSE MARGARET HUNTLEY. [SEAL.]

Signed, sealed, and delivered in the presence of—
J. C. HEALD.

UNITED STATES OF AMERICA, }
District of Columbia, } *ss:*

I, J. C. Heald, a notary public in and for the District aforesaid, do hereby certify that Charles C. Huntley and Rose Margaret Huntley, his wife, parties to a certain deed bearing date on the 11th day of August, A. D. 1876, and hereto annexed, personally appeared before me, in the District aforesaid, the said Charles C. Huntley and Rose Margaret Huntley, his wife, being personally known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Rose Margaret Huntley being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal, this 12th day of August, A. D. 1876.

[SEAL.] J. C. HEALD,
Notary Public.

[Endorsed:] Fee, $3.00. This is to certify that the within is a true and verified copy of a deed as recorded in liber No. 823, folio 465, *et seq.*, one of the land records for the District of Columbia. Washington, D. C., March 17th, 1882. Geo. F. Schayer, dep. recorder.

DISTRICT OF COLUMBIA:

I, Bartram Zevely, a United States commissioner and examiner in chancery in and for the District of Columbia, duly appointed by the supreme court of said district, do certify that the foregoing depositions were taken down by me, by consent of counsel, and reduced to writing in the presence and from the statements of the witnesses and places designated in the caption, and were read over by said witnesses and by them subscribed and sworn to in my presence.

I further certify that I was attended by the counsel of both par-

ties, respectively, and that I am not of counsel for either of the parties in said cause, nor in any way interested therein.

[SEAL.] BARTRAM ZEVELY,
U. S. Comm's'r and Examiner in Chancery, Dist. of Columbia.

Depositions of J. W. Parker and Bradley Barlow, witnesses for the Defendants.

In the Supreme Court of the District of Columbia.

HUNTLEY
v.
BARLOW *et al.* } No. 6558. Eq. Doc. 19.

To the justices of the supreme court of the District of Columbia, holding an equity court:

The depositions herein below contained were written down by me from the statements of said witnesses, who were produced, sworn, and examined before me on behalf of the defendants in the above-entitled cause, pursuant to agreement, the witnesses having first been duly cautioned to tell the truth, the whole truth, and nothing but the truth, without favor or affection to either party.

Mr. Wm. F. Mattingly appeared for the complainant.

Mr. Nath'l Wilson appeared for the defendants.

A. JOHNS,
Examiner in Equity.

169 *Depositions for Defendants.*

In the Supreme Court of the District of Columbia.

SILAS S. HUNTLEY
v.
BRADLEY BARLOW, CHARLES C. HUNTLEY, and ADAM E. SMITH. } No. 6558. Eq. Doc. 19.

FEBRUARY 19, 1880.

The following deposition was taken by consent, at the office of Mr. Wm. F. Mattingly, on the above date, there being present for the plaintiff Mr. Wm. F. Mattingly, and for the defendants Mr. Nathaniel Wilson:

J. W. PARKER, having been previously sworn in the case, was recalled and examined for the defendants, and testified as follows:

By Mr. WILSON:

Q. You have been questioned in your deposition for the plaintiff in this case as to the time and circumstances of the sale of your interest to C. C. Huntley. Please examine paper now shown you, and state if you identify it.

A. I recognize this paper.

Q. What is it?

A. It is a contract and bill of sale of this property made by me at the date stated here. I recognize my signature.

(Mr. Wilson offers the paper in evidence, and it is marked "Defendants' Exhibit No. 1.")

Q. Was the money provided to be paid in this bill of sale all duly paid; and, if so, by whom?

A. Yes, the money was all paid.

Q. According to the tenor of this agreement?

A. Yes, sir; the drafts and notes were paid promptly.

Q. Was the negotiation, to your knowledge, made with or on behalf of any other person than Bradley Barlow and Charles C. Huntley?

A. No, sir; not that I know of.

Cross-examination by Mr. MATTINGLY:

Q. Did Col. DeLacey call on you relative to purchasing your interest in the N. W. Stage Co.; and, if so, how long was it prior to the execution of this paper?

170 A. Col. DeLacey called on me with a view to purchase the stock of the N. W. Stage Co. at some time previous, but I cannot give an idea of the date.

Q. About how many months?

A. I should think some time in March, 1874.

(Mr. Wilson objects to the last two questions and answers, as immaterial.)

By Mr. WILSON:

Q. Was Col. DeLacey a friend of yours?

A. I had never met him before.

By Mr. MATTINGLY:

Q. Did you introduce him to C. C. Huntley at that time?

A. I did at that time.

J. W. PARKER.

MAY 11, 1880.

The following deposition was taken by consent at the residence of Mr. William F. Mattingly on the above date, there being present for the plaintiff Mr. William F. Mattingly, and for the defendants Mr. Nathaniel Wilson:

BRADLEY BARLOW, having been previously sworn in the case, was recalled and examined for the defendants, and testified as follows:

By Mr. WILSON:

Q. Please examine Exhibit S. S. H., No. 1, filed with the bill of complaint, and state when, by whom, under what circumstances, and for what purpose it was prepared.

(Counsel for plaintiff objects to the witness placing any construction upon this paper, or to giving any testimony to vary in any way its contents.)

A. I think the idea of having something of that kind was suggested to me for the security of myself and all of the parties. I

think Mr. C. C. Huntley was going to Europe about that time, and there were very good reasons to my mind why something of that kind should be done. There were four parties interested, as I supposed, and the contracts were in the names of different parties, and

171 for my own security I desired to have something of that kind, and I thought it was equally desirable for the others that there should be something of that kind. I think that I wrote the original myself, and that Mr. Chapman, who did work for me, copied it, and copies were given to all the parties that signed it. I think it was executed at the Arlington Hotel, in this city, but it may have been at my house; I had a house here all the time; I should rather be inclined to think, however, that it was executed at the Arlington, because Mr. Huntley was then in a feeble condition, and I see he signed it. I think it was just on the eve of his departure for Europe.

Q. Did you receive at that time any information from C. C. Huntley as to the interest of S. S. Huntley in the contract of the Northwest Stage Company?

A. I do not think that C. C. Huntley ever spoke a word to me about it, except the first time he told me that he was going to let Si have an interest in these routes equal to his own, and that he was purchasing it with a view of letting him have an interest. I do not think he ever mentioned the subject to me at all afterwards. I am very sure that there was not anything said about it at this time.

Q. Have you any recollection as to whether C. C. Huntley read the paper, or whether it was read to him before he signed it?

A. I have not any recollection about that.

Q. Did you at that time, or at any time prior to the filing of the bill in this case, have any information from C. C. Huntley or S. S. Huntley as to their respective rights and interests in the one-third of the property of the N. W. Stage Company?

A. I thought it was very remarkable that there was never anything said to me about it, but I always considered from what Charley said to me that in some way Si was going to have the interest that is set down in that paper, and I never heard Charley say anything to the contrary in our settlements, or otherwise. He never said anything about on what terms he held it all, but I supposed when I drew up that paper that I was drawing it up in accordance with the facts in the case, and that the terms upon which he held it were understood between them. I had no information from either of them about that, and I did not know anything about it.

Q. And the recitals in the paper were drawn up by you,

172 without any directions from either C. C. or S. S. Huntley?

A. I do not think I had any directions about it from anybody. I assumed that that was the fact. At that time Charley's health was in bad condition, so that he could not do anything himself about his business, and Si had charge of all his other business, and I made that paper for my own security more than anything else, and at the same time securing the others, as I supposed, in their rights.

and California Stage Line, which said company has been and is now engaged in the transportation of the United States mails and in transporting passengers on the following route, to wit, from Oraville, California, to Portland, Oregon, and am, by the terms of the agreement between us, the owner of one undivided fourth part of all the property of said company, both real and personal, wherever the same is situated;

175 And whereas I now propose to withdraw from both of said companies, and do hereby withdraw therefrom, and to sell and dispose of all my rights and interest therein to the said Charles C. Huntley:

Know all men by these presents, that I, the said James W. Parker, of Atchison, Kansas, for and in consideration of the sum of seventy-five thousand dollars, for which amount the said Charles C. Huntley has made and delivered his eight certain promissory notes, all bearing even date herewith, and payable at the National Park Bank, New York, to the order of Bradley Barlow, and indorsed by him, five of said notes being for the sum of ten thousand dollars each, payable on or before the first day of August, 1874; two of said notes being for ten thousand dollars each, payable on the first day of February, 1875; one of said notes being for five thousand dollars, payable on the first day of February, 1875, the receipt of which said promissory notes I hereby acknowledge, do grant, sell, set over, and transfer to the said Charles C. Huntley all my right and interest of whatever kind in and to all the property, both real and personal, now held, owned, and possessed by the said companies, and each and both of them, and in all the coaches, wagons, harness, horses, and running and rolling-stock of whatever kind, implements, tools, stations, and shops on said routes, or elsewhere, and in all moneys due and to become due to either or both of said companies or persons for the transportation of the mails or for any other account; to have and to hold all and singular the said goods, stock, property, rights, and interests, unto the said Charles C. Huntley, his executors, administrators, and assigns, forever, so that neither I, the said James W. Parker, nor any other for me or in my name, any right or interest in the said goods, stock, property, rights, and interests of whatever kind, shall or will ever claim or demand at any time or times hereafter, forever. And I, the said James W. Parker, my executors, and administrators, shall and will forever warrant and forever defend by these presents all and singular the said goods and stock, rights and interests, unto the said Charles C. Huntley, his executors and assigns, against the claims and demands of all persons claiming the same by, through, or under me, my heirs, executors, administrators, and assigns.

176 And I, the said James W. Parker, do further covenant and agree that at any time hereafter I will, at the cost of the said Charles C. Huntley, execute and deliver to the said Charles C. Huntley any quit-claim deed or deeds for and to any real estate that may have been heretofore conveyed to either of said companies, or to the partners constituting the same.

Witness my hand and seal, this 27th day of June, A. D. 1874.

JAMES W. PARKER. [SEAL.]

Signed, sealed, and delivered, and delivery of possession of the goods, stock, interests, and rights given by the said James W. Parker, delivering to the said Charles C. Huntley one dollar, in the name of the whole of said goods, property, and premises, in the presence of—
HENRY R. ELLIOTT.

DISTRICT OF COLUMBIA:

I, Henry R. Elliott, a United States commissioner in and for the District aforesaid, do hereby certify that James W. Parker, party to a certain bill of sale bearing date on the 27th day of June, A. D. 1874, and hereto annexed, personally appeared before me, in the District aforesaid, the said James W. Parker, being personally known to me to be the person who executed the said bill of sale, and acknowledged the same to be his act and deed.

Given under my hand and seal, this 27th day of June, A. D. 1874,

[SEAL.] HENRY R. ELLIOTT,
U. S. Comm'r for the Dist. of Col.

DISTRICT OF COLUMBIA, *to wit:*

I, R. J. Meigs, clerk of the supreme court of the said District, hereby certify that Henry R. Elliott, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same U. S. commissioner for said District, duly commissioned and qualified and authorized to take acknowledgments and to administer oaths, and that his attestation thereto is in due form.

Witness my hand and seal of said court, this 30th day of June, 1874.

[SEAL.] R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Assistant Clerk.

177 In the Supreme Court of the District of Columbia.

S. S. HUNTLEY
vs.
BRADLEY BARLOW *et al.* } Equity No. 6558. Docket 19.

Depositions of L. H. Hirshfield and S. S. Huntley, witnesses for the complainants in rebuttal.

To the justices of the supreme court of the District of Columbia, holding an equity court:

The depositions herein below contained were written down by me from the statements of said witnesses, who were produced, sworn, and examined before me on behalf of the complainant in the above-entitled cause in rebuttal, pursuant to agreement, the witnesses having first been duly cautioned to tell the truth, the whole truth, and nothing but the truth, without favor or affection to either party.

Mr. Wm. F. Mattingly appeared for the complainant, Mr. Nathaniel Wilson appeared for the defendants.

A. JOHNS,
Examiner in Equity.

In the Supreme Court of the District of Columbia.

SILAS S. HUNTLEY
vs.
BRADLEY BARLOW, CHARLES C. HUNTLEY, and EDAM E. SMITH. } No. 6558. Eq. Doc. 19.

Depositions in Rebuttal.

MONDAY, *October* 18, 1880.

Met by agreement at the office of Mr. William F. Mattingly, Washington, D. C.

Present: Mr. William F. Mattingly for complainant, and Nathaniel Wilson, Esq., for defendants.

L. H. HIRSHFIELD, having been duly sworn, testified as follows:

A. My residence is in Helena, Montana, and I am a banker by occupation.

By Mr. MATTINGLY:

Q. State where you resided from 1866 to 1874, and in what business you were engaged.

178 A. In Helena, in the banking business.

Q. Are you acquainted with the parties to this suit, Mr. C. C. and S. S. Huntley and Bradley Barlow?

A. I am acquainted with the Huntleys, and have some acquaintance with Mr. Barlow.

Q. State when S. S. Huntley first came to Montana.

A. In the spring of 1867, is my recollection.

Q. From 1867 to 1874, in what business was he engaged there, and what was he doing generally?

A. He was the general manager and business agent for C. C. Huntley.

Q. Had you a general knowledge at the time of the duties he was performing in that connection?

A. I had knowledge of portions of the business he was doing?

Q. During that period, from 1867 to 1874, what portion of the time was C. C. Huntley in Montana?

A. From 1867 to 1870 he was there occasionally; so far as I can remember he was there once or twice every year; from 1870 to 1874 he was not there so often.

Q. About how long would he remain on each occasion?

A. I could not say the exact length of time, but not very long.

Q. Please give us an idea as to the manner in which S. S. Huntley lived out there; whether extravagantly or economically, or how?

A. He appeared to me to be living very judiciously and rather economically; did not wear extravagant clothes; was not addicted to drinking or smoking, and his sleeping apartments he had in our office for a good portion of that time. We had sleeping apartments in the basement of our office. While he was in Montana, and I had an opportunity of observing, I should say that he lived rather economically.

Q. What were the general salaries paid there at that time for clerical help?

A. In the earlier years of the Territory salaries were very high there. You could better judge from what he had to pay for men who had no responsibility, but only had clerical duties to perform from 9 in the morning until 4 in the afternoon. We had to pay $250 a month in gold.

Q. That is for book-keepers in your bank?

A. Yes, sir.

179 Q. At what premium was gold at that time?

A. All the way from 40 to 50 per cent; that is, for a portion of that time; that premium did not prevail all during the whole six or seven years. I think in 1867 the premium was considerably higher than that.

Q. Please state, if you can, what, in your judgment, knowing these parties and the business they were engaged in, and its extent somewhat, would have been a fair compensation for S. S. Huntley's services, if his place could have been filled?

A. That is the question. To fill a confidential place in a country like Montana is a very difficult thing to do. Men of that kind were very hard to get, and are now, without intending any flattery to Mr. Huntley. He had to go over a long stretch of country; he had many routes to look after, and some to sublet, and others to manage so as to get increased service. He had to attend to the finances, hire men, discharge men, pay off men. I should feel myself very fortunate if I could, under the same circumstances, get a man for $5,000 a year to do the same amount of work for me.

Q. $5,000 in gold?

A. Yes; that was the currency of the country at that time.

Q. Please state whether or not in the early part of 1874 C. C. Huntley made any statement in your presence relative to purchasing Parker's interest in the Northwestern Stage Company; and, if so, where it took place, and when, and what was said?

(Question objected to by Mr. Wilson, as immaterial, and on the ground that no foundation has been laid for it.)

A. It was in the early part of 1874, on Fifth avenue, at a place where Mr. Huntley was boarding. They were making out bids for the mail lettings for the next four years, and in general conversation that matter came up that he did not wish to have Parker in the firm, and that he would purchase Parker's existing interest in the Northwest Stage Company for Si.

Q. Did the routes they were bidding for include the routes then running by the Northwest Stage Company?

A. Yes, sir.

Q. Was this with a view of preparing bids so as to control those routes, with a view of forcing Parker out—to sell?

180 A. As I understood, it was to get entire control of those routes.

Cross-examination by Mr. WILSON:

Q. Are you and Mr. S. S. Huntley in business together in any way?
A. How do you mean—jointly interested?
Q. No, no; but are you interested together in any contracts?
A. No, sir.
Q. Or in business of any kind with him?
A. No; no business of any kind or character.
Q. Does he keep an account with you?
A. Yes, sir.
Q. How long have you known C. C. Huntley?
A. I have known him since 1866.
Q. What time in 1866?
A. When he first came to the Territory—I think early in the summer of 1866?
Q. What were your business relations?
A. We had business together.
Q. What kind?
A. Banking business.
Q. Do you mean as depositors?
A. Depositors and borrowers.
Q. Did he never loan you any money?
A. No, sir.
Q. At no time?
A. No, sir; not at any time.
Q. An account was kept there in his name?
A. Yes, sir; in his name.
Q. In his name alone?
A. Yes, sir.
Q. Who had the right to draw on it?
A. Both of them.
Q. Either, or both?
A. Either.
Q. Both of them drew in the same name?
A. In the name of C. C. Huntley, signed by S. S.
Q. All the checks, then, of S. S. in the name of C. C., on C. C.'s account, were paid as though they had been signed by C. C. himself?
181 A. I could not say that. I would have to refer to our books to see how those checks were signed. My impression is that they were signed C. C. Huntley. The account was kept in the name of C. C. Huntley.
Q. And continued in his name until when? Is the account closed now?
A. Yes; and has been for several years.
Q. When was it closed?
A. I could not give you that information. I would have to get that from home.
Q. Give me your best recollection.
A. It must be three, or four, or five years ago, it seems to me.

Q. Who settled it?

A. S. S. settled it.

Q. In whose name was all the said business conducted in Montana up to the time Charley was taken sick?

A. In C. C.'s name.

Q. When S. S. first arrived in Montana, what were his duties?

A. Office duties.

Q. Do you mean to say that you think his services for the first year after he arrived were worth $5,000?

A. Well, I don't know that; for a portion of the first year his services would be worth hardly that; that would be merely my opinion.

Q. Did you have any person in your employ to whom you paid $5,000 a year?

A. No, sir.

Q. How large a business did you carry on?

A. It was quite extensive.

Q. How many thousand dollars a year?

A. A number of hundred thousand.

Q. Five hundred thousand?

A. Yes.

Q. A million?

A. Yes, sir.

Q. Two million?

A. It has run up to that.

Q. What was the highest salary you paid to any one?

A. We had no managers. I was the manager myself. We had only clerical people at the books; that is all.

Q. Do you know who is the present superintendent of Gilmore & Salisbury?

182 A. No.

Q. Do you know who was then?

A. No, sir.

Q. Do you know any person who was engaged in similar relations with any other mail contractors at that time?

A. No, sir; I don't.

Q. Do you know of any person occupying a similar situation at that time who received as high a salary as $5,000?

A. I don't know of any one who occupied such a position, and never have known.

Q. Do you know Gov. Pollinger?

A. I do.

Q. What is his business?

A. When I knew him he was a stage driver, and afterwards was division superintendent on one of the stage lines.

Q. For whom?

A. Latterly, I think, it was for Gilmore & Salisbury.

Q. Do you know what salary he received?

A. No, sir; I could not tell you.

Q. Do you think that, the second year, S. S. Huntley's services were worth $5,000 to C. C. Huntley?

A. I think part of the first year's were—after C. C. Huntley left the Territory.

Q. State exactly what S. S. Huntley's services were the second year.

A. His services were continuously of that character.

Q. What character.

A. General manager of stage lines.

A. State distinctly what lines he managed the second year he was there?

A. He had the Walla Walla route to look after, for one.

Q. Did he run that?

A. I think that was sublet.

Q. What else?

A. There was a line to Beartown, and a line to Deer Lodge, I think.

Q. Was that actually run?

A. I could not tell you whether it was actually run; they had it.

Q. You don't know whether they ran it or not?

A. No; my impression is that they did stage it.

183 Q. Are you sure of that?

A. I don't want to be positive of it.

Q. Between what points was that route?

A. From Helena to Deer Lodge and to Beartown.

Q. Is that the same route?

A. It is a continuation of the same route.

Q. What other routes?

A. They had one to Mussel Shell; that carried the mail.

Q. What other route?

A. They had one to Highland; I think they carried the mails on that route. I don't know whether there was any stage there or not. And they had a route to Diamond City.

Q. I will ask you what stage lines they ran?

A. That is as near as I can recollect the stages they ran; they ran a stage line into the Sweetwater country.

Q. Anything else?

A. They had so many stage routes that it is difficult to recall them all.

Q. I ask you how many stage lines they ran the second year he was there?

A. I don't know whether it was in the 2d year or the 3d year.

Q. I am asking about the second?

A. I could not tell you about that; I don't know whether they sublet all their stage routes or ran them; it is my impression that they did run some stage lines then.

Q. What other business was carried on in C. C.'s name that second year?

A. What do you mean by "other business"—mercantile business?

Q. Any kind.

A. I don't know of any kind except that which was connected with mail routes.

Q. Did they keep their account with you during that year?

A. I think so.
Q. How large an account was it; do you remember?
A. Not distinctly.
Q. State approximately.
A. It would, at times, be considerable; say, $30,000 or $40,000.
Q. For the whole year?
184 A. I could not tell you for the year, because settlements were made with them every month.
Q. How much a month?
A. $30,000 or $40,000 some months, and some months probably more.
Q. What stage lines did they run in the third year?
A. I don't know exactly what year it was that they ran the route from Helena to Missoula; they ran a stage route there; I would have to refresh my recollection about that.
Q. What stage route did they run the fourth year?
A. I don't know whether they had sublet all their contracts or were running them.
Q. What did they run the fifth year?
A. I don't know.
Q. The sixth year?
A. I could not tell you.
Q. Nor the seventh?
A. No.
Q. What was the highest salary paid by you to any of your book-keepers in 1867?
A. $250 a month, in gold.
Q. To whom was that paid?
A. A brother of mine.
Q. Was he interested with you in the business?
A. Finally—yes. I considered him a valuable man and gave him an interest in the business; I could not spare him; he was worth more than that salary; that was the first year he came with me, and the second year I gave him an interest in the business.
Q. What was the next highest salary you paid any time between 1867 and 1874?
A. $150 a month.
Q. To a book-keeper?
A. Assistant book-keeper.
Q. Do you know where S. S. lodged, from 1867 to 1874?
A. Not continuously; a portion of the time he lodged in our office.
Q. Was that when he first went there?
A. No, sir.
Q. Where did he lodge afterwards?
A. I could not tell you.
185 Q. Do you know of his lodging in a building put up by C. C. Huntley?
A. Yes, sir.
Q. When was that?
A. I could not give you the dates.

Q. What year was it; was it before or after he lodged with you?
A. I think it must have been after.
Q. Do you know by whom that room was furnished?
A. No, sir.
Q. Have you been in it?
A. Yes, sir.
Q. Frequently?
A. Occasionally.
Q. Was it very handsomely furnished?
A. Only moderately so.
Q. What should you suppose the furniture cost?
A. I could not judge.
Q. State as near as you can.
A. There was a bedstead, bureau, dressing-case, and a three-ply carpet, or something like that.
Q. What do you suppose the furniture of that room was worth?
A. I should hate to place a value upon it, because I am not a judge of those things.
Q. You are not a judge of the value of furniture at that time there?
A. No, sir.
Q. How did [you] arrive at your estimate of the value of S. S. Huntley's services to C. C. Huntley?
A. From the amount of business he had to look after; they had very many mail routes in Montana, and out of that Territory, of which Si had the management in Montana, because Mr. C. C. Huntley was in Montana only occasionally.
Q. Why were those services not worth $10,000 as well as $5,000?
A. I am speaking of their reasonable value.
Q. Don't you think they were worth $10,000?
A. Is just according to a person's disposition.
Q. Have you any idea of the profits made out of the routes by C. C. Huntley from 1867 to 1874?
A. Only from hearsay.
186 Q. Not from him?
A. No, sir.
Q. Why have you not the same reason for thinking S. S. Huntley's services were worth $10,000 that you have for thinking they were worth $5,000?
A. That would not be a reasonable conclusion.
Q. Should not you think they were worth $10,000?
A. They would not be worth that to me.
Q. You don't think they were worth $10,000 to him, do you?
A. I could not tell you.
Q. You don't think they were worth $5,000 to him?
A. I think they were worth $5,000 to him.
Q. How do you know?
A. From my knowledge of the business that I knew he did.
Q. You do not know what profit he made?
A. No, sir; I don't. The labor he performed was not based upon the profit that C. C. was making.

Q. Do you know what salary S. S. received before he went to Montana?

A. No, sir.

Q. You never heard?

A. Oh, I might have heard.

Q. Have you ever had any conversation with any one on the subject of the value of his services for that time?

A. No, sir.

Q. You never asked anybody what his services were worth?

A. No, sir.

Q. And never heard anybody there say what his services were worth?

A. No, sir; I never had any discussion about it.

Q. You have said a good many times that they had a great many mail routes in Montana from 1867 to 1874; tell us what those routes were, that you know of.

A. They had a route to Diamond City; one all the way to Missoula and Beartown; they had a route to Skalkaho; they had a route from Missoula to Walla Walla, and one to Sweetwater, and one from Helena to Bozeman, and probably others; I don't remember just now.

Q. Is that all?

A. That is all I remember.

187 Q. Do you mean to say that during all that time C. C. had nothing to do with the management of those routes, and that S. S. had the entire management of them?

A. That is the case, so far as I knew, because Mr. Huntley was very seldom in Montana.

Q. What was C. C. doing?

A. I could not tell you; I don't know.

Q. You had a constant correspondence with C. C. from 1867 to 1874, had you not?

A. Oh, no, sir; we had constant business together?

Q. And you have no idea of where he was or what he was doing during that time?

A. He was in Washington.

Q. Did you meet him here frequently?

A. Occasionally, when I was here.

Q. Were you here often?

A. Not very often.

Q. What was he doing when you were here?

A. His business seemed to be with the Post Office Department.

Q. Who managed his business from the time you first knew him until 1867, the time when Si went out there?

A. He managed it himself.

Q. Was he absent a good deal of the time?

A. I think he closed up his business when he left Montana, in the winter of 1866.

Q. Closed up his business; how?

A. He sold out.

Q. What business did he have?

A. He had the stage route, I think, to Benton.
Q. When did he return to Montana?
A. I think he returned in the spring of 1867; I won't be certain.
Q. Then, until Si came out there, he had no business there?
A. Not a great deal of business; he bought some flour on speculation, I think.
Q. But he did not have any mail routes?
A. He had that one at Benton, I think.
Q. Any others?
A. I don't remember any others.
Q. Did he have any property there?
A. I could not tell you whether he had or not.
188 Q. When was his theatre built?
A. I would not like to say.
Q. Was it not before Si went out there in the spring of 1867?
A. I can't say; probably it was before that.
Q. Who owned it in the winter of 1866–1867?
A. Probably C. C. did.
Q. Did he have any other property?
A. He may have had.
Q. Did he not keep an account with you right straight along from 1866 to 1867?
A. He kept an account with us very shortly after his arrival in the Territory, but I don't know whether it was continuous or not.
Q. What was the name of your firm?
A. L. H. Hirshfield & Co.
Q. Who constituted the "Co."?
A. A. Hanamer.

Redirect examination by Mr. MATTINGLY:

Q. See if you remember these stage routes as having been run for C. C. Huntley, Helena to Missoula?
A. That was one.
Q. Missoula to Cedar Creek?
A. I remember that.
Q. Virginia City to Bannock?
A. I remember that.
Q. Virginia City to Beartown; that I think you mentioned?
A. Yes, sir.
Q. Helena to Benton?
A. I know of their having that; I gave that as one of the first he got in the Territory.
Q. Helena to Mussel Shell?
A. Yes, sir.
Q. Helena to Diamond?
A. Yes, sir.
Q. To Lincoln?
A. Yes, sir; they had that route, too.
Q. Missoula to Walla Walla?
A. Yes, sir.
Q. Helena to Bozeman?

A. That I think you mentioned; yes, sir.

189 Q. Bozeman to Virginia City?

A. I did not mention that; there is another route—I guess I could not state the date exactly when they had it—and that was from Bannock to Leesburg; they had a route there, I think.

Recross-examination by Mr. WILSON:

Q. State the dates when they had those routes.

A. I could not tell you.

Q. You don't mean to say that they had them all at the same time?

A. They had them all about the same time.

Q. Did they all run from 1867 to 1874?

A. I could not say.

Q. Those are all the routes you know of their having between 1867 and 1874?

A. They had those routes during the whole of that period, at some time or other during that period.

Q. But how many they had in 1868 or in 1869, or '70, '71, '72, '73, or '74, you do not know?

A. I couldn't tell; they had those routes, but whether they had them all at one time or not, I couldn't tell.

Q. Those are all the routes you recollect?

A. Those are all I recollect.

Q. State as nearly as you can when that conversation occurred in New York, to which you referred in your direct examination.

A. It was at the time when they were all bidding together; I could not be precise about the month, it was in the winter of 1873–'74; that would describe it as near as I could get at it.

Q. You have stated all that occurred in that conversation?

A. All that I remember.

L. H. HIRSHFIELD.

THURSDAY, *Nov.* 4, 1880.

Met by agreement at the residence of Mr. Mattingly.

Present: Mr. Mattingly, for the complainant; Mr. Nathaniel Wilson and Mr. J. Hubley Ashton, for the defendants.

SILAS S. HUNTLEY, being recalled in rebuttal, testified as follows:

190 Q. By Mr. MATTINGLY: Do you know Thomas S. Huntley, the father of C. C. Huntley?

A. Yes, sir.

Q. State whether you were at his home after you went to Montana and prior to 1871.

A. Once.

Q. When was that?

A. Late in the fall of 1870.

Q. Were you at his place yearly during that period?

A. I went to Montana early in 1867, and remained there all the time until late in the fall of 1870, when I came East and stopped at my uncle's.

Q. After that visit, how often were you there between that and 1874?

A. I have been there three or four times altogether in my life, probably.

Q. Did you converse with him about C. C. Huntley's business?

A. In a general way I have conversed with him about his business.

Q. In your conversations with him relative to C. C. Huntley's business, did you go into matters of detail and post him as to the condition of the business?

A. No, sir; I never told him anything, in regard to the details, as to what our receipts and expenses were. I would tell him that our business was good or bad at times; that would be all; and that would only refer to the stage business.

Q. Thomas S. Huntley, on page 13 of his deposition in this cause, states that you told him you were going to redeem a certain piece of property that belonged to the heirs of an aunt's estate, and take it, and that you had done so. What have you to say about that?

A. That is a mistake. I have no recollection of ever telling him or any other person that I was going to redeem any aunt's estate, and I never did redeem any aunt's estate, in part or in whole; I never paid anything for any aunt that I know of.

Q. He also states that there was an incumbrance upon a farm your father had, and that you said you were going to redeem that likewise.

191 A. There was an incumbrance on my father's farm, and I think there is still; and I probably did say that I should like to remove the incumbrance, but I never have felt able to, and I never have done so. I never paid the incumbrance, or any part of it.

Q. He further states that you refixed your father's house to a considerable extent. How about that?

A. I never refixed it to any great extent; I did give him a little money to repaint and to paper his house.

Q. Was that prior or subsequent to July, 1874?

A. It was about that time; I think it was in 1874.

Q. Have you any recollection as to the amount?

A. It was probably $100 or $200; I have no recollection as to the amount precisely.

Q. He says you furnished a carriage and harness to your father, What are the facts about that?

A. I was in the habit of ordering stages and harness in Concord for our Western business, and once while there I ordered a buggy and two sets of harness, I think, for my father, which I sent up there some time in 1874, and I paid for them in October, 1874.

Q. State whether you paid for them with your own money.

A. The whole bill I ordered at Concord at that time came to $1,263, $408 of which was for the buggy and harness for my father, and $855 was for harness for C. C. Huntley and S. S. Huntley, which were sent up to the stage lines. I charged myself with one-half of

that $855 and the whole of the $408; or $835.50 was charged to me in October, 1874.

By Mr. ASHTON:

Q. Charged where?

A. In an account I was keeping on page 2 on the ledger that S. S. and C. C. Huntley had.

Q. Where is that ledger?

A. It was down at Mr. Wilson's office to-day, and I left it at Mr. Mattingly's office to-night; and the account was audited by Mr. C. C. Huntley in S. S. and C. C. Huntley's suit, and accepted as correct.

By Mr. MATTINGLY:

192 Q. State whether the papers you now hold are the bill and receipt for the carriages and harness you have referred to.

A. Yes, sir; accompanied by the letter of transmittal from the Abbot, Downing Company, dated Concord, N. H., October 27, 1874, enclosing their bill and receipt.

Q. And the pencil marks on the back indicate the division of the amount, as you have detailed?

A. The pencil marks on the back indicate the division as made in our accounts, charging me with my proportion, and C. C. Huntley with his proportion.

(Mr. Mattingly offers said papers in evidence, and they are marked by the examiner Exhibit Rebuttal, Nos. 1, 2, and 3.)

Q. When you left New York to go to Montana, state whether you were offered an increase of salary from your employers in New York; and if so, what amount?

A. Previous to going to New York, I was a clerk in the War Department in Washington, at $1,600 a year. I went to New York, leaving this position to accept one of $1,000 a year, and my wages were twice raised after that, and when I was leaving there I was offered $2,000 a year if I would remain. I had taken the position of a man there who was receiving $3,000 a year when I went there.

Q. C. C. Huntley, in his deposition, states, on page 2, in answer to the question as to what arrangement he made with you about going to Montana, as follows: "I said to him, you go out to Montana with me, and work with me, and I will give you $100 a month and find you." State whether that is so or not.

A. No such conversation occurred at that time. I remember distinctly when C. C. Huntley came from the war I was in Washington, a clerk here, and when he went to California, I remember distinctly when he came back, and distinctly where he met me in New York, and that no such conversation occurred at that time; but he did want me to go to Montana, and said that we would go into the stage business together, and he would come over to Washington and secure contracts. He did come over to Washington, and a few days after that telegraphed me that he had secured contracts for—I forget how many thousand dollars, and for

me to come over. I took the train that night, and came over to Washington, and then resigned my position over in New York.

193 Q. Were you employed at any fixed salary?

A. No, sir; we were only to secure contracts, and go into the stage business out there, and there was no fixed salary stated.

Q. On page 7 of his deposition he says that you owed him money all the time; is that so?

A. I never was in debt to C. C. Huntley. He never advanced me any, and I never drew out any considerable amount.

Q. On page 12 of his deposition he states that the total receipts from all the contracts during that period of 8 years, from 1866 to 1874, amounted to $300,000 or $400,000; what have you to say as to that?

A. When I came over here in 1867, the contracts we had just secured were not less than $40,000 per annum, and they were never less than that, and the mail pay that he himself received during the whole length of time would be probably $900,000 or $1,000,000; and he was also interested in the Northwestern and the California and Oregon Stage Companies, from 1872 to 1874, and the mail pay on those routes came to about $1,800,000 or $1,900,000. He had a one-sixth interest in part of those, and a one-fourth in the other part.

(Mr. Wilson objects to the question and answer, as being made to contradict a statement of C. C. Huntley, elicited on cross-examination.)

Q. After C. C. Huntley left here in June, 1874, when did he return to this city?

A. He went over to New York, and returned here on or about the 15th of July, and then started West for California, and his first appearance in Washington was in December, 1874.

By Mr. ASHTON:

Q. Where were you at that time?

A. I was with him a part of the time. I met him in California. I left him here in the early part of June, and went to the Pacific Coast, and he followed me, and I met him there and came back with him.

By Mr. MATTINGLY:

Q. Was he here at the Arlington Hotel in either September, October, or November, 1874?

194 A. No, sir; he was not in Washington during those months of 1874.

Q. From July 1st, 1874, to July 1st, 1878, state whether you consulted from time to time with Mr. Nathaniel Wilson, and whether you considered that he was acting as attorney for both you and C. C. Huntley.

A. I consulted with Mr. Wilson in the fall of 1874, and continued so to do until the suit was commenced by C. C. Huntley. I con-

sulted with him both for myself and for C. C. Huntley, and I considered him my attorney.

Q. During that period did you have any conversations with Mr. Wilson relative to the money that C. C. Huntley was demanding of you? And state whether you had any talks with Mr. Wilson about C. C. Huntley drawing more than his share of the profits.

A. I did consult with Mr. Wilson frequently about it, and particularly when C. C. Huntley was using more money than his profits in the concern would warrant, or more than he ought to use under any circumstances, and he was complaining that he did not receive enough from me. I agreed with Mr. Wilson, after showing him the book that I kept and the accounts, and the way the routes were running, and how they stood, that I would give Charley regularly $500 a month, and this I paid him regularly, sometimes to him directly and sometimes through Mr. Wilson, until he came on to Washington and revoked the power of attorney for three or four routes that were in his own name. After that I ceased to give him any money, he using the money collected from the Post Office Department by himself.

Q. At the time the notes for $27,000 and upwards were signed by you in the name of C. C. Huntley and S. S. Huntley, which were given to Mr. Barlow, state whether Mr. Wilson stated to you that, if you thought proper and best to do so, as the representative of C. C. Huntley, holding his power of attorney, you should exercise your best judgment and do what you thought right and sign the notes.

A. C. C. Huntley had just had a settlement with Mr. Barlow, in which Mr. Barlow brought him individually in debt about $60,000, and C. C. Huntley gave his notes to Mr. Barlow for this amount.

This was in relation to real estate and other business, in which
195 I was not interested. After that settlement I came into the settlement of the stage business, and Mr. Barlow, as president, treasurer, cashier, and so on, brought our company (C. C. Huntley's interest and my own interest) in debt to the amount of about $27,000, and C. C. Huntley refused to sign the notes that Mr. Barlow requested for this amount. Mr. Wilson said that if I thought the account was correct I had better give the notes; that it would be just as good if I signed them as if C. C. Huntley signed them, or as if both of us signed them. There was no mention at that time about signing them by power of attorney, and I did not sign them as attorney-in-fact.

Q. Was anything said about you signing them as the representative of C. C. Huntley?

A. No, sir; it was never mentioned.

Q. Mr. Wilson states that at that time you did not claim that the one-half interest of Mr. Barlow had been purchased for you, and that you were to have it without paying for it. Was anything said upon that subject, or had Mr. Wilson any previous information from you as to your interest in the Northwest Stage Company, or did you state, at that time, that you were not interested in it?

A. I certainly did not state that I was not interested in it, but I did claim an equal interest in the Northwest Stage Company and

in the California and Oregon Stage Company, with C. C. Huntley. I did not state that I was to receive it without paying for it; I had already paid for it. In our transactions at that time it was considered by Mr. Barlow and by C. C. Huntley, that I did have that interest, and I supposed that Mr. Wilson considered it the same. I acted upon that basis and made our figures upon that basis; and the figures upon which we arrived at this conclusion were then destroyed, and we (C. C. and S. S. Huntley) gave our notes for $27,000 and took Mr. Barlow's receipt for all indebtedness, up to September 30th, for the fifteen months' business.

Q. Did you consult with Mr. Wilson as to the sale to Sanderson of the California and Oregon Stage Company?

A. Yes; on a number of occasions I spoke to him about it; and, finally, when we determined on the sale, I called at his house one evening for him to go up and assist me in drawing up the papers to release me from all obligations, to turn the property over
196 to Mr. Sanderson, and see that the payment was made correctly; and for me he drew up the papers, and I sold the one-fourth interest of myself in the California and Oregon Stage Company, and the one-fourth interest of C. C. Huntley's, for $20,000, to be applied on the $27,000 notes that Mr. Bradley Barlow held.

Q. State whether Exhibit S. S. H., No. 1, appended to your deposition, was a power of attorney to use for drawing any money from the Post Office Department.

(Question objected to by Mr. Wilson.)

A. It was not intended as a power of attorney to draw money from the Post Office Department. It was not drawn up with that intention, and it was never used for that purpose. It was drawn up to define our different rights in case that C. C. Huntley should be married to a young lady at that time, or in case any accident should happen to him while abroad. It was to denote our respective proportions of the business. Powers of attorney for drawing money were then drawn up and were filed in the Department.

Q. And powers of attorney were executed under which Mr. Barlow drew all the mail pay for the Northwestern Stage Company?

A. They were separate things entirely, and given to Mr. Barlow, and they are now on file in the Post Office Department.

Q. In your former testimony you refer to a safe containing your books and papers in Montana, which was lost; please state whether you have made efforts to find that safe, and with what result?

A. We kept an iron safe in Montana from 1868 to 1870; and the books that I kept at that time, when I first went there (a set of double-entry books and other books connected with the stage business), and contracts, and so on, were all locked up in this iron safe, and left in the basement of the bank; and whatever became of them I don't know. I looked for them last summer when I was there, and I have looked for two or three years, every year I have been up there, and made diligent inquiries in regard to them, and I cannot find them, and I have no idea what became of them, nor had the people in the bank.

Cross-examination by Mr. WILSON:

Q. When was the ledger you speak of, in which these accounts were entered, made up?

197 A. The book was made up in December, 1876, or in the winter of 1876–'77, I think.

Q. Were any fees that were ever paid to Mr. Wilson, paid by you in whole or in part, or charged to you?

A. No, sir; I never paid Mr. Wilson any fees.

Q. Where did you get your copy of Exhibit S. S. H., No. 1?

A. I got it at the Arlington Hotel, in this city, in 1874, at the time of its execution. Four copies were made: one for C. C. Huntley, one for Mr. Barlow, one for Adam E. Smith, and one for myself.

Adjourned to 4 o'clock p. m., to-morrow, Nov. 5th, to meet at Mr. Mattingly's office.

In the Supreme Court of the District of Columbia.

HUNTLEY
vs.
HUNTLEY and BARLOW. } In Equity. No. —.

You are hereby notified to produce for inspection and send in evidence in the above-entitled case all books, papers, and checks in your possession or control, showing the moneys expended by you of moneys belonging to C. C. Huntley, prior to July 1st, 1874, and particularly all books, papers, and checks showing the moneys of C. C. Huntley drawn or received by you and expended for your own personal use and benefit, prior to July 1, 1874.

J. H. ASHTON.
NATHANIEL WILSON.

To S. S. HUNTLEY, *Defendant in the above case.*
March 4, 1880.

FRIDAY, *November 5th*, 1880.

Met pursuant to adjournment. Present: Mr. Mattingly, for the complainant; Mr. Wilson, for the defendants.

By agreement adjourned to 8 o'clock p. m., Monday, November 8th, to meet at Mr. Mattingly's residence.

MONDAY, *November 8th*, 1880.

Met pursuant to adjournment. Present: Mr. Mattingly, for the complainant; Mr. Wilson, for the defendants.

198 S. S. HUNTLEY was further examined in chief by Mr. MATTINGLY as follows:

Q. In response to the notice served on you by Mr. Wilson, herewith filed, will you please produce all the papers you have for inspection, called for by that notice?

A. I have looked for all the checks I could find, and have assorted them, and now produce them.

Q. You now produced those for your own personal use?

A. For my own personal use; yes.

Q. Now, please produced the other checks.

A. Here are the ones I assorted the others from. (Producing a large number of checks, accompanied by two bank-books.)

Q. State whether you have any books showing accounts prior to 1874; if not, why not?

A. We had books in Montana, and then we had books where we did business in Wyoming; we also had books in Idaho and in California; but those books were never brought to Washington, and the business that they represented was never really consolidated. Those that I had charge of in Montana I have not been able to find, as I have heretofore explained. Those books that we had in Wyoming Territory were looked over in 1874, but were never brought away from there, and the agent that we had there at that time has gone away, and I don't know what has become of them. I never thought that they would be of any use or benefit after they were balanced. The business represented by all of these different books, as I said, was never consolidated, and no regular books were kept here to show what the business really was. The superintendent and the book-keeper, that we had in Idaho, has since died, and the books that were in his possession, I suppose, are still there, but they have never been brought away. And the books in California have never been brought away.

Q. The books in Idaho and California related to the business done in those respective States, I suppose?

A. The books in Wyoming related to the business done there, and those in Montana related to the business done there; those kept in Boise City related to that section of the country, and the books kept in California related only to the business in that section.

199 These books were checked off, and the accounts were supposed to be correct at that time, and they were left there.

Q. Have you produced all the checks you have been able to find dated prior to 1874?

A. I have produced all that I have been able to find prior to 1874. These checks, at the time they were surrendered by the banks, were generally examined by me to see that the signatures and the footings were correct; and, if not, I had them corrected, and then I would just mark the packages containing them "O K," and that would settle it without putting them in any book form.

Q. Have you any checks for the years 1867, 1868, and 1869?

A. I do not find any checks relating to those years. I think they must have been left in the safe that was lost in Montana, as I have before testified; if not, I am not able to find them.

Q. State if this paper headed "Recapitulation" is a list of all the amounts for your own personal use.

A. That represents the checks drawn out for my personal use from all these checks I have produced, and it represents all that I am able to find in that bundle that I think properly chargeable to me for my personal use.

(Mr. Mattingly offers the paper in evidence, and it is marked Exhibit, Rebuttal, No. 4. By request of Mr. Wilson the checks described in said list also accompany the list.)

Cross-examination by Mr. WILSON:

Q. In what book was your personal account kept?

A. I have never kept any personal account, except when I was in Montana; that was kept in a double-entry book that I was keeping there at first.

Q. What time did that occur?

A. When I first when to Montana, 1867.

Q. And up to when?

A. I only kept those books a few months, and then I went out on the road to carry mail on horseback, and was gone several months; when I came back I started new books.

Q. In those books you did keep your personal account?

A. Anything that I may have drawn was charged to me at that time, if I drew anything.

200 Q. Then you had a book in which the charge was made?

A. I accounted for every dollar that went through my hands either way after 1874.

Q. If you charged it to yourself, there was, of course, an account where you charged it?

A. Yes; if I drew any money there was an account.

Q. You know whether you did keep an account or not?

A. I know that every man in our employ had a Dr. and Cr. column, and every month he would be credited with his month's wages, and, on the other side, he was debited with whatever he drew out. I never kept any account where my money was put down as so much due me, but whatever I may have drawn was charged to me when drawn. However, as I took $400 or $500 with me to Montana the first year or so, I do not know whether there was anything drawn out and charged to me or not. But every dollar was accounted for in those books.

Q. In what book were those entries made—a ledger?

A. I don't know; I suppose it was a ledger. I kept a cash-book and what was necessary.

Q. Were the books which contained an account of the moneys paid to you in that safe to which you have referred?

A. I think that they all were, but I am not positive.

Q. During the time between 1867 and 1874 the bank account of C. C. Huntley was kept with Hershfield, was it not?

A. Some of it was kept with him.

Q. Was any of it kept anywhere else?

A. He had different bank accounts.

Q. In Montana?

A. No, sir; not in Montana.

Q. What bank accounts did he have?

A. I don't know all he had; he used to deposit with Beckman Bros. & Hollins, in New York, Donnell, Lawson & Co., in New York, and with Lewis Johnson & Co., in Washington.

Q. Where are the pass-books for the account kept with Hershfield & Co.?

A. I do not know that I had them; at any rate, I don't know where they are now.

Q. When did you last see them?

A. I don't remember when I did see them last.

201 Q. Who kept the pass-books during those times?

A. I don't remember much about the pass-books.

Q. You have produced the pass-books of the account of C. C. Huntley with Lewis Johnson & Co. from November, 1869, to April, 1872. Have those books been in your possession ever since they were made?

A. I can't say that they have been in my possession all the time. I checked them off at the time the statements were made to see that the accounts were all right, and still they were in C. C. Huntley's possession, but now I find them in my possession.

Q. When did they last come into your possession?

A. I don't remember when they came into my possession.

Q. Have you produced all the checks that are referred to in those books?

A. All that I had that I am able to find anywhere.

Q. I want to know whether they are all?

A. I have not examined to see whether they are all in those books or not, but I presume so, as they are all the checks I can find.

Q. Have you produced any checks for the time prior to November 9, 1869?

A. I don't know what date they do commence—I didn't examine. The outside of each package has a wrapper giving the date, and generally checked off by me.

Q. These checks that you have produced are all drawn on the account of C. C. Huntley, either in Montana or on Lewis Johnson & Co.?

A. Yes, sir.

Q. And they are all signed by you?

A. No, sir.

Q. They are all signed by you or C. C. Huntley, are they not?

A. No, sir; they are signed by different people.

Q. Who else?

A. Some are signed by Hirshfield, and I don't know but that some are signed by other parties. The majority of them, I think, are signed by C. C. Huntley.

Q. And these are all the checks that you are able to find, covering the period from 1870 to 1874?

A. Those are all the checks that I have in my possession, that I am able to find up to 1874.

202 Q. And you have no books of any kind showing the transactions prior to 1874?

A. No, sir; I cannot find any.

Q. The checks that are described in this schedule, that you have introduced, were for your own personal use?

A. Yes, sir; as near as I can get at it, and figure them out. They are generally marked for myself.

Q. In keeping the books that were kept, when these checks were given, on what account would they appear?

A. There was no real keeping of books about it. Only as the

statements were given by the banks with these surrendered vouchers, and then I would examine and check them off to see that they were all right, and that was about the extent of it. At that period my memory was fresh, and I knew that the checks were rightly drawn.

Q. In looking at the checks which you have produced, I find a number that were signed by C. C. Huntley, payable to your order, in August and September, 1873, and I think these are the only ones signed by him to your order, are they not?

A. I think so.

Q. They amount altogether to $1,975. State if the money was paid to you.

A. I find 8 checks here amounting to $1,700 or $1,800 drawn on Lewis Johnson & Co., Washington, D. C., and mostly signed by C. C. Huntley to my order. I have no doubt I drew all the money, and I find that I drew most of it while in New York, through Donnell, Lawrence & Co. there, and I am very positive that this money drawn at that time was used for the benefit of C. C. Huntley. I was in Montana in August, 1873, and C. C. Huntley telegraphed me to come to Washington. I came on here and found him very sick at the Arlington Hotel, and unable to leave the house. I went over to New York on his account to find suitable physicians to attend him, and made a few trips backwards and forwards, and finally engaged the services of Drs. Van Buren and Keys, and took him over to New York. We stopped at the Gilsey House awhile, and after searching around the city I found suitable rooms for us, a servant, and others, and he was confined to the house and bed most of the time, I think. During his sickness I drew his money to pay sundry bills. The checks do not show for what particular purpose
203 the money was used, and if I had any receipts at the time, I am not able to produce them now. I think that the money was spent for the benefit of C. C. Huntley at that time. I see these checks are made out in my handwriting, and generally I stated in the checks for what purpose they are drawn, but at that time I was very much worried and excited, and I neglected to fill them out in that way.

Q. These checks are marked S. S. H., and numbered from 1 to 8 inclusive. Most of them have marked on them in blue pencil for "account C. C.'s sickness."

A. They were probably marked that way for C. C.'s sickness at the time the vouchers were surrendered. I think probably they were marked when I examined the vouchers, when they were returned from the bank.

Q. I also observe another check payable to S. S. Huntley, dated June 20th, 1872, for $300.

A. That was given to me by C. C. Huntley, for the credit of the Montana account, and I so endorsed it, and gave it to Hershfield Bros., in Montana, for the credit of C. C. Huntley in Montana.

(The check referred to is marked S. S. H., No. 9.)

Q. I also notice a check signed by C. C. Huntley, your favor, for $100, dated April 15th, 1873

A. I see that I used the check while in Omaha, and I therefore think it was for travelling expenses. I find it marked in lead pencil "at Omaha." And I think it was so marked when the checks were examined, after they were surrendered by the bank.

(This check is marked S. S. H., No. 10.)

Q. I find also two other checks, dated April 13th, 1872, for $200, and April 15th, 1872, for $300; both signed by C. C. Huntley, payable to your order, marked in pencil or ink "travelling expenses."

A. In reference to the one for $200 of April 13th, marked in lead pencil "travelling expenses," from the date and place given I should think I was at the Sherman House, in Chicago. And the one for $300, dated April 15th, 1872, marked for travelling expenses, I think was used in New York; I see it was put in there for collection with Northrup & Chick, New York; both are endorsed by me; I think they were used for travelling expenses connected with the business.

(These two checks are marked S. S. H., Nos. 11 and 12.)

204 Q. I find also a check of C. C. Huntley to your order, dated January 30th, 1871, for $2,250; what was that for?

A. This check of January 30th, 1871, for $2,250, I have no distinct recollection of, except that I know it was not for my own use. I don't know whether I got the cash on it or a draft; it is made payable to me or bearer, and is not endorsed by me. I know the money was never drawn for my use, but what was done with it I can't say positively.

(This check is marked S. S. H., No. 13.)

Q. I find also a check, dated January 31st, 1873, for $6,000; what have you to say about that?

A. This check for $6,000 is made payable to me, endorsed by me, and marked for draft at bank. I know that for this check I received a $6,000 draft on Donnell, Lawson & Co., in New York, I think, and it was sent to New York, I think, for the credit of C. C. Huntley, or some of his sub-contractors.

(This check is marked S. S. H., No. 14.)

Q. Was any account ever kept or rendered showing what disposition was actually made of the moneys that are described in these checks?

A. No, sir; there never was any account kept showing the amount of money drawn, or for what purpose used; in fact, there was no account then kept of those checks, except when the statements were rendered and the vouchers surrendered by the banks. They were checked off and marked "correct."

(The above-named checks marked S. S. H., and numbered from 1 to 14, inclusive, are offered in evidence by Mr. Wilson.)

Adjourned to 3.30 p. m. to-morrow, November 9, to meet at Mr. Mattingly's office.

TUESDAY, *November* 9, 1880.

Met pursuant to adjournment. Present: Mr. Mattingly, for the complainant. Mr. Wilson, for the defendants, appeared after the testimony was all taken, and it was read over to him from the notes.

Redirect examination of S. S. HUNTLEY by Mr. MATTINGLY:

205 Q. Examine check S. S. H., No. 13, dated January 30, 1871, for $2,250, and state whether you have endeavored to refresh your recollection as to that check, and what your best recollection of it now is.

A. I have endeavored to ascertain the facts in regard to it, and my best recollection is, as it is marked in lead pencil "draft C. C. H.," and made payable to bearer, and not endorsed by me or any other person, that at that time or in the winter of 1871 I went to Chicago and purchased a team for C. C. Huntley for $2,250, and drew on him or on the bank for that amount. I am quite positive that the check is to take up that draft to pay for this team for C. C. Huntley.

Q. This money, I understand you to say, was not drawn by you for your personal use?

A. I am positive that it was not drawn for my use at all.

Q. Was that team sent on to C. C. Huntley?

A. Yes; it was sent to him, and he still owns the team.

Q. Look at check S. S. H., No. 14, dated January 31, 1873, for $6,000, and state whether you have refreshed your recollection as to that; and, if so, what that was for?

A. I find this marked in lead pencil "draft at the bank." It is made payable to my order and endorsed by me, and is dated January 31, 1873. I find at the bank of Lewis Johnson & Co., where I did business at that time, that on February 1 (that was on the following day), a draft was given to C. C. Huntley, on the National Park Bank, New York, in favor of Donnell, Lawson & Co., and sent over there to the credit of C. C. Huntley.

Q. Then the draft for $6,000 which that check paid for, as I understand it, was placed to the credit of C. C. Huntley with Donnell, Lawson & Co., his bankers in New York?

A. Yes; I never had the proceeds, or any part of them.

Q. During this time, from 1867 to 1874, when C. C. Huntley was in the city here, did he draw moneys from the Post Office Department and deposit them or not, as he saw proper?

A. He drew all the money, probably; no doubt he drew all the money from the Post Office Department in Washington and deposited it in bank, or used it as he saw fit.

Q. Did he send to you regularly the amount collected by him?

206 A. No, sir; he never sent any money to me.

Q. Did he make any report to you of his collections?

A. No, sir; he made no report to me of his collections, but I knew from the contracts the amount that he received.

Q. In the package of checks for your personal use, abstracted in Exhibit Rebuttal, No. 4, I find a check dated October 14, 1871, marked

"Paid, sundries, $114.55," of which amount you charge yourself with $52.25. Please explain that.

A. I find this check was drawn in Helena, Montana, in October, 1871, for $114.55. The memorandum on the back shows that it was all for conducting the business there, except $19, which was given for clothing, and $33.25, at a restaurant; those two items I have charged to myself, amounting to $52.25. The balance belongs properly to the business.

Q. Then $52.25 of that was applied to your personal use?

A. Yes, sir; and the balance of it is for telegraphing, stable bills, furniture man, and post office.

Q. In this same package is a check dated November 16, 1870, for $500, of which amount you charge yourself with $100. State why that was so.

A. This check was given in Montana in November, 1870. At that time we had just finished staging up there and were closing up business and paying final bills and so on, and I started East directly after that. There is a memorandum stating that $400 was paid for bills, fare, etc., which properly belonged to the stage business; the other $100 I have charged to my personal account.

Q. In this same package is a check dated September 3 (year not given) for $600, of which amount you charge yourself with $100. Please explain that.

A. This check, I think, was made September 3, 1872. I see a memoradum on it, made at that time, "Left town." My recollection is that I did leave Helena at that time, and that this money was used for settling up bills, as I generally did when I would leave up there, and part of it was used for my fare East, amounting altogether to $500. The balance, $100, I charged to my own personal account. The bills and fare I speak of belonged to the stage business.

Q. In this same package is a check dated June 30, 1871,
207 for $166.50, of which amount you charge yourself with $49. Please explain that.

A. This check was given in Helena June 30, 1871, and marked "See memorandum," which is on the back of the check; $15.50 of it is for furniture, $12 is for Cornell (carpenter), $90 is for ranch bill. This all properly belongs to the stage business, and $34 to Ganse & Kline, which I have charged to myself for clothing, and $15 I have marked "self," making altogether $49 to my own personal account.

Q. In this same package is a check dated April 10, 1872, for $200, of which amount you charge yourself with $86.25. Explain that.

A. On the face of this check is written "See mem." The memorandum on the back of the check shows $113.75 for Middleton; for what purpose that was I don't recollect, but I have charged myself with the balance, $86.25, as personal.

Q. Was the amount of the memorandum for Middleton for the benefit of C. C. Huntley or the business you were engaged in?

A. I believe the amount, $113.75, for Middleton was on account of the business that we were conducting, as I never had any dealings with Middleton at that time.

Q. How does the amount which you drew out for your personal

use from 1867 to 1874 compare with the money that you placed to C. C. Huntley's credit belonging to yourself, and of which C. C. Huntley derived the benefit, as to which you have already testified?

A. I have already testified that when I went to Montana I took a few hundred dollars, and that while in Montana I had a brother who owned a ranch, station, &c., which were sold after he died, and the proceeds went to the credit of C. C. Huntley; also, on my own account, I speculated in gold dust up there, and I also won, on an election, quite a large amount of money, all of which was placed to the credit of C. C. Huntley, and all of these amounts, I think, would be much in excess of the money that I drew out of C. C. Huntley's account.

Q. With reference to the checks marked S. S. H., and numbered from one to seven inclusive, dated in August and September, 1873, the proceeds of which you have stated were applied to the
208 payment of C. C. Huntley's expenses while sick in New York during that period, please state why his expenses were so large; and, in that connection, whether they were large in comparison with his ordinary expenses at that time when not sick?

A. This amount of money was to pay expenses, which were necessarily large at that time, as I traveled backward and forward between here and New York a number of times; we stopped at the Gilsey House in New York for awhile, and then changed to very expensive and convenient rooms, where he could be near the doctor; he had at that time a man servant and a woman attending to him, and also a coachman; he also took his team over there at that time; the doctor's bills were large at that time, and this money was all paid for the benefit of C. C. Huntley. It may not all have been paid for bills that occurred just at that time; part of it may have been used for the payment of bills that had been rendered. In any event, it was all paid for the benefit of C. C. Huntley. All the money was used as he directed, and he at that time was unable to get out of the house.

Q. Can you give any idea of his ordinary expenses per month about that time when well?

A. I cannot state what his ordinary expenses were; they varied very much; generally his expenses were quite high, at the rate of $10,000 or $12,000 per year. Part of the time since then I have known him to live at the rate of $20,000 per year.

Adjourned to 3.30 p. m. to-morrow, Nov. 10, 1880.

WASHINGTON, D. C., *November* 10, 1880.

Met pursuant to adjournment.

Present: Mr. Wilson, for defendants; Mr. Mattingly, for complainant.

Recross-examination of S. S. HUNTLEY by Mr. WILSON:

Q. When the check for $2,250 that is in evidence cashed?

A. I am not positive when it was cashed, but I think it was cashed at the time of its date—January 30, 1871.

Q. Was that the date of the purchase of the team that you have spoken of?

209 A. I do not remember the exact date of purchase of the team, but I know it was some time in January, 1871. I purchased it in January, and drew on C. C. Huntley at Washington, for that amount.

Q. If you drew on him and he paid the draft, how came this check to be issued?

A. I think he went down and took the draft up and put in his check. That would be an explanation, though I am not positive as to that, as I did not find the draft anywhere.

Q. Is there anything on the check to show what it was used for

A. There is nothing on the check to show what it was used for or that I ever had it, except that my name is on it.

Q. So, in respect to the draft for $6,000, how do you know that amount was on that day or the day thereafter placed to the credit of C. C. Huntley?

A. Because I know I never received any amount from C. C. Huntley of $6,000, and he never paid me any such amount; but that money was used for C. C. Huntley, and I find at the bank that on the following day, February 1, the same amount—$6,000—was sent by draft from Lewis Johnson & Co. to his credit in New York.

Q. Is there anything to show on the books of Lewis Johnson & Co. that that draft was sent to his credit?

A. No, sir; it shows that it was sent (examining the draft) to Donnell, Lawson & Co., New York, who were his bankers; for he was in the habit of sending money every quarter for the payment of sub-contractors.

Q. But there is nothing on the books or draft to show to whose credit it went?

A. No, sir; I know that every quarter he was in the habit of sending from $5,000 to $7,000 there for one and different amounts at different times.

Q. The check for $400 marked "S. S. H., No. 4," is signed by you in your own name. On whose account was that drawn?

A. It was drawn on C. C. Huntley's account.

Q. Did Lewis Johnson & Co. pay checks signed in your name?

A. Yes, sir; they did.

Q. The checks dated August 4, and the several days

210 later than that, signed by C. C. Huntley, payable to your order, were, you say, used during his sickness. On the 20th of August there is a draft for $400 signed by you in your own name or for C. C. Huntley. What was the occasion of getting him to sign drafts in August and September when he was so sick?

A. I cannot say; at that time I generally preferred him to draw the checks for the amounts of money, but if it was more convenient for me to draw a check, I did it; and if I did draw a check it would be paid there the same as though he did it, though nearly all of them are checks drawn by him.

Q. On August 20, 1873, there is another check for $75 made by

you, payable to A. F. Taylor. Why did you sign that rather than get his signature thereto?

A. I do not know why I happened to sign it, only I knew that I could sign it and it would be paid. Perhaps C. C. Huntley was not present at that time, and I wanted the money.

Q. A number of the checks that have been referred to and offered in evidence contain items on their backs of various amounts supposed to account for the proceeds of the check. When were those endorsements made?

A. Those endorsements, I think, were all made at the time the check was drawn; if not, they were made at the time the vouchers were surrendered by the bank.

Q. Some are in writing and some in pencil.

A. That was merely to show the disposition of the money.

Q. For instance, in the check drawn September 3, 187–, to your order for $600, "bills" are charged $500 and "self" $100. What does the item "self $100" mean?

A. Right under the date of that check at the time it was drawn I marked "left town" on them. That shows that I left Helena on that date, and the "$100 self" would probably be what I used; I used a part of that money for general purposes connected with the business, and the other part I expect I used for myself. I do not know as it was exactly $100. It may have been a little more or a little less, as I have no memorandum on the check to show.

Q. Did that $100 go into the books that were kept by you at the time; and if not, why not?

211 A. That never went into any books, because there were no books kept at that time.

Q. The check of March 5, 1873, is payable to the order of D. I. Huntley. For whose benefit was that?

A. That was for the benefit of my father, I think; at least that is my father's name.

Q. Did the money go into any book?

A. It never went into any book.

Q. At that time no books were kept by you in which an entry of money you received for your own benefit was made?

A. No, sir; there was no book of that kind kept.

Q. When you first went out to Montana you used, as I understand, to keep a book in which you entered moneys received, and used by you for your own account.

A. When I went to Montana I kept a book and accounted for every dollar, debit and credit, for all purposes.

Q. When did you stop keeping that book?

A. I only kept it a few months.

Q. And after that you did not keep any book showing the amounts?

A. After that, for a few months I was on the road, and there were no books kept until I returned to Helena again, and we commenced business once more; I then kept books again, accounting for every dollar.

Q. Up to what time?

A. That was up to 1870.
Q. Then you stopped?
A. Then I stopped.
Q. After the first of 1870?
A. Some time in 1870.
Q. You stopped keeping books?
A. I stopped keeping books.
Q. And all the moneys that were expended by you for yourself after that time were not entered in any book?
A. Since that time there was no regular set of books kept.
Q. For instance, in the check dated November 16, 1870, for $500, "S. S. H., acc't $100," "fare, bills, &c., $400." Where is that account entered?
A. I don't know that it was entered in any books at all; I think it was after we closed up the books there or were about leaving; I think it was in settlement of bills coming in after the books were closed. They were closed, I think, in 1870. Always after you are doing business of that kind there will bills come in for a number of years after. We have got bills coming in yet four or five years old unpaid.
212
Q. Yes; there is a bill now for a blacksmith.
A. Yes, sir; I got a number of bills last summer. At the time you settle your business you think you have paid all, but bills will come in afterwards that have not been rendered in time.
Q. These checks that are in evidence are not the only checks for moneys that have been received by you, signed by C. C. Huntley, and payable to your order, I suppose?
A. They are all the checks that I have any knowledge of whatever, and they are all the checks, I think, that I have received. I cannot find any others, and I do not believe there are any others.
Q. All the checks that were signed by C. C. Huntley, you mean?
A. All the checks that were signed by C. C. Huntley or S. S. Huntley for myself. If there are any others, I have no knowledge of them whatever.
Q. But various other sums have been paid to you from 1871 to 1874 on checks payable to your order or on drafts drawn by you on C. C. Huntley, have they not?
A. I am not aware of any drafts drawn by C. C. Huntley or by myself during that time, aside from those that I have already testified were for my benefit.
Q. Do you know of any draft drawn by you on C. C. Huntley October 30, 1872, for $1,000?

(Question objected to by Mr. Mattingly, unless the draft is produced.)

A. I have no recollection of it, and would have no recollection unless it was among the vouchers surrendered by the bank, and all those vouchers of which I have any knowledge whatever I have presented, and have looked over very carefully.
Q. Have you any knowledge of a draft drawn in your favor by you on C. C. Huntley on November 11, 1871, for $500?

(Question objected to, unless draft is produced.)

A. I have no knowledge of it.

Q. One on the 15th of the same month for $250?

(Question objected to, unless draft is produced.)

213 A. I have no knowledge.

Q. In July, 1873, a check to your order for $500?

(Question objected to, unless draft is produced.)

A. I have no knowledge of any drafts or checks except those that I have surrendered.

Q. Is it your best recollection that the drafts that have been surrendered are the only ones that have been drawn by you or paid to you, or are they not a part only of the drafts that are shown to have been made and paid by the bank account of Lewis Johnson & Co.?

A. I could not say whether they are a part or all of the vouchers sur rendered by Lewis Johnson & Co., or a part or all of those surrendered by Hershfield & Co.

Q. A great many checks were made in August and September, 1873, by C. C. Huntley in addition to those that were made by him in your favor, were there not?

A. I do not know whether there were many made besides those made in my favor or not.

Q. Do you know of any?

A. I do not know. I did not examine.

Q. Did he do any business during those months?

A. He was sick abed when I came on here in August. I went to New York, and he was confined to his house, and confined to his bed in New York in September. He could not have done any business, except through me, very well. I would write his letters.

Q. He was confined to his bed here?

A. Yes, sir; confined to his room.

Q. Where was he staying?

A. At the Arlington Hotel.

Q. Who was attending him?

A. I think it was Dr. Garnett.

Q. What day did you arrive here?

A. I do not remember. He telegraphed me from Washington to Montana to come on, and I immediately started East.

Q. Did you leave him here and go to New York?

A. Yes, sir. I went backwards and forwards a few times. He wanted to get the best physicians there were in New York. The physicians I went over to find, in the first place, were in New York

Q. Who were they?

A. Dr. Bunstead.

214 Q. Do you know of C. C. Huntley signing any checks for money during those months?

A. I do not remember whether he did or not.

Q. These various checks which were paid to you never, as I understand it, appeared in any book after 1870, and never were made

the subject of any settlement of account as between you and C. C. Huntley?

A. They never were put in any book form, and the account was never kept as a debit and credit. They were never made the subject of any settlement, except that all books should be balanced the 1st day of July, 1874.

Q. But your account was not balanced?

A. I never kept any accounts.

Q. You then drew on his account with Lewis Johnson & Co. and with Hershfield & Co. whenever you wanted money for purposes of the business or for your own use?

A. Yes, sir; I drew for myself and for business purposes.

Q. Did you draw on his other accounts in New York?

A. I am not positive, but I think I drew on the account with Beekman Bros. & Hollins in New York.

Q. Covering what time?

A. That was in 1873, and I do not know how much at other times.

Q. Did he have any other account?

A. He had different accounts in New York—with Donnell, Lawson & Co., and I think he had an account with Isaac Green & Co., but I do not remember positively about that; but I do not remember of having drawn on those bankers for anything for myself, as the account was kept in C. C. Huntley's name, and they are more particular in these larger banks than where I would be well known. I did draw on Beekman Brothers & Hollins, in New York—they knew me very well there—and on Lewis Johnson & Co., and on Hershfield Bros. I did draw large amounts for other purposes. I could have drawn large sums for myself, but I never did do so. I do not think I ever did draw over $200 or $300 at any time for my own use, and I could have easily drawn $10,000. There never was any power of attorney given by C. C. Huntley to any of these banks for me to draw, and I never drew on a power of attorney, but they knew me very well. It was understood that if I did draw they should pay the checks.

215 Q. You were in Washington in 1871, 1872, and 1873, were you not?

A. Part of the time.

Q. Where did you stop?

A. I stopped at the Arlington Hotel.

Q. Your bills were paid there by C. C. Huntley?

A. Yes, sir.

Q. Did you not obtain money from the hotel as you had occasion to use it, and have it charged in the account?

A. I do not know that I did.

Q. Ten, 15, 20, 30, 40, or 50 dollars at a time?

A. I do not remember that I did; but I presume I did get 5 or 10 dollars at a time.

Q. As much as fifty?

A. I do not think I ever did.

Q. Twenty-five?

A. I do not think I ever did.

Q. Twenty?
A. I may have.
Q. Frequently?
A. No, sir; not very frequently. I would go to the office and get 50 or 100 or 200 dollars, and it may have been marked on the bill to me when it was for C. C. Huntley. I would go from the room down there and take it up to him.

Second redirect examination by Mr. MATTINGLY:

Q. What was your business when in this city in 1871, '2, and '3?
A. I was here figuring on mail contracts.
Q. You was engaged in business for the concern?
A. I was figuring on mail contracts that C. C. Huntley secured and collected the money for.
Q. Had you any personal account with Donnell, Lawson & Co. of New York?
A. I never had any personal account with them. I never had any personal account at any place prior to 1874.

Second recross examination by Mr. WILSON:

Q. In 1874 where did you open your personal account, and at what time?
A. I opened a personal account here in the city.
Q. Whereabouts?
216 A. With Lewis Johnson & Co.
Q. In what month?
A. I think it was in November or December, 1874.
Q. And kept an account in your name with them for how long?
A. I do not remember; a few months.
Q. Depositing with them moneys received in respect to these mail routes?
A. In respect to the mail routes of C. C. Huntley and myself, which we were interested in.

In addition to not having any bank account of my own prior to 1874, I will state that in June, 1874, I did not have $500, and all that I had at that time was my accumulated interest in what C. C. Huntley owed in our business for the previous seven or eight hears.

S. S. HUNTLEY.

S. S. H., No. 1.

No. —. WASHINGTON, D. C., *Aug.* 17, 1873.

Lewis Johnson & Co., bankers, pay to S. S. Huntley, or order, two hundred dollars.

$200. C. C. HUNTLEY.

Marked in blue pencil: "C. C. H."

S. S. H., No. 2.

No. —. WASHINGTON, D. C., *Aug.* 8, 1873.

Lewis Johnson & Co., bankers, pay to S. S. Huntley, or order, four hundred dollars.

$400. C. C. HUNTLEY.

Marked in blue pencil: "C. C. H."

S. S. H., No. 3.

NEW YORK, *Sept.* 22, 1873.

At sight, Lewis Johnson & Co., Washington, D. C., pay to the order of S. S. Huntley one hundred and fifty dollars.

$150. C. C. HUNTLEY.

Marked in blue pencil: "Acc't C. C., sickness, N. Y."

217 S. S. H., No. 4.

CITY OF WASHINGTON, *August* 20, 1873.

Lewis Johnson & Co., bankers, pay to self four hundred dollars.

$400. S. S. HUNTLEY.

Marked in blue pencil, "Acc't C. C., sickness."

S. S. H., No. 5.

$125. NEW YORK, *Sept.* 17, 1873.

At sight, pay to the order of S. S. Huntley one hundred and twenty-five dollars, value received, and charge the same to account of—

C. C. HUNTLEY.

To Lewis Johnson & Co., Washington, D. C.

Marked in blue pencil: "Acc't C. C., sickness, N. Y."

S. S. H., No. 6.

NEW YORK, *Sept.* 11, 1873.

Lewis Johnson & Co., Washington, D. C., pay to the order of S. S. Huntley two hundred dollars.

$200. C. C. HUNTLEY.

Marked in blue pencil: "C. C., sickness, N. Y."

S. S. H., No. 7.

NEW YORK, *Sept.* 7, 1873.

Lewis Johnson & Co., Washington, D. C., pay to the order of S. S. Huntley three hundred dollars.

$300. C. C. HUNTLEY.

Marked in blue pencil: "C. C., sickness."

S. S. H., No. 8.

$100. WASHINGTON, D. C., *Aug.* 6, 1873.

Lewis Johnson & Co., bankers, pay to S. S. Huntley, or order, one hundred dollars.

No. —. C. C. HUNTLEY.

Marked in blue pencil: "Acc't C. C. H."

218 S. S. H., No. 9.

CITY OF WASHINGTON, *June* 20, 1872.

Lewis Johnson & Co., bankers, pay to S. S. Huntley, or order, three thousand dollars.

$3,000. C. C. HUNTLEY.

Marked in blue pencil: "Montana acc't."

S. S. H., No. 10.

$100. WASHINGTON, D. C., *April* 15, 1873.

Lewis Johnson & Co., bankers, pay to S. S. Huntley, or order, one hundred dollars.

C. C. HUNTLEY.

Marked in blue pencil: "At Omaha."

S. S. H., No. 11.

$200. OFFICE OF THE SHERMAN HOUSE, CHICAGO, *April* 13, 1872.

On demand, pay to the order of S. S. Huntley, two hundred dollars.

C. C. HUNTLEY.

To Lewis Johnson & Co., Washington, D. C.

Marked in blue pencil: "Trav. exp."

S. S. H., No. 12.

CITY OF WASHINGTON, *April* 15, 1872.

Lewis Johnson & Co., bankers, pay to order of S. S. Huntley, three hundred dollars.

$300 (three hundred). C. C. HUNTLEY.

Marked in ink: "Trav. exp."

S. S. H., No. 13.

CITY OF WASHINGTON, *Jan.* 30, 1871.

Lewis Johnson & Co., bankers, pay to S. S. Huntley, or bearer, twenty-two hundred and fifty dollars.

$2,250. C. C. HUNTLEY.

Marked in pencil: "D'f't C. C. H."

219 No. —. HELENA, MONTANA, *Oct.* 14, 1871.

L. H. Hershfield & Bro., bankers, pay sundries bearer, or order, one hundred and fourteen 55-100 dollars.

$114.55. S. S. HUNTLEY,
for C. C. HUNTLEY.

Marked in ink: "See mem." On back: "Memoranda.—Telegram, $16.80; horse & B. S., $8; Klane, $33; Gansk, $19; Kan Kan, $33.25; P. O., $4.50—$114.55."

No. 30. HELENA, MONTANA, *Nov.* 16, 1874.

L. H. Hershfield & Bro., bankers, pay to S. S. Huntley, or order, five hundred dollars.

$500. S. S. HUNTLEY,
for C. C. HUNTLEY.

Marked in blue pencil: "Settlement bills; start East."

NEW YORK, *Oct.* 5, 1872.

Lewis Johnson & Co., Washington, D. C., pay to Traphagen, Hunter & Co., or order, sixty dollars.

$60. S. S. HUNTLEY.

Marked in pencil: Ch. C. C. Huntley." In ink: "Self."

No. —. NEW YORK, *October* 5, 1872.

Lewis Johnson & Co., Washington, D. C., pay to the order of A F. Taylor, one hundred dollars.

$100. S. S. HUNTLEY,
Chg. Acc't C. C. HUNTLEY.

Marked in ink: "Self."

$150. WASHINGTON, D. C., *March* 5, 1873.

Thirty days from date, pay to the order of D. I. Huntley one hundred and fifty dollars, value received, and charge the same to account of—

No. —. S. S. HUNTLEY.

To Lewis Johnson & Co., Washington, D. C.

Marked in ink: "Charge C. C. Huntley." In blue pencil: "Acc't S. S. H."

220 No. —. WASHINGTON, D. C., *Aug.* 20, 1873.

Lewis Johnson & Co., bankers, pay to A. F. Taylor, or order, seventy-five dollars.

$75. S. S. HUNTLEY.

Marked in ink: "S. S. H. Chg. C. C. Huntley."

No. —. WASHINGTON, D. C., *Sept.* 1, 1873.

Lewis Johnson & Co., bankers, pay to S. S. Huntley, or order, two hundred seventy-seven 43-100 dollars.

$277.43. C. C. HUNTLEY.

Marked in blue pencil: "Acc't S. S."

No. —. HELENA, MONTANA, *Sept.* 3, 18—.

L. H. Hershfield & Bro., bankers, pay self, or order, six hundred dollars.

$600. S. S. HUNTLEY,
For C. C. HUNTLEY.

Marked in pencil: "See mem. Bills." On back: "Small bills. Fare East, &c., $500; self, $100—$600."

No. —. HELENA, MONTANA, *June* 30, 1871.

L. H. Hershfield, & Bro., bankers, pay sundry bills, or order, one hundred and sixty-six 50-100 dollars.

$166.50. S. S. HUNTLEY,
For C. C. HUNTLEY.

Marked in ink: "See memoranda." On back: "Memoranda: Furniture to Klane, $15.50; Cornell, $12; Gans & K., $34; ranch bill, winter, $90; self, $15—$166.50. S. S. H., $49—115.50."

No. —. HELENA, MONTANA, *August* 5, 1872.

L. H. Hershfield & Bro., bankers, pay W. F. Chadwick, or order, one hundred dollars.

$100. S. S. HUNTLEY.

Marked in ink: "I bet Madison county gives Clagett one hundred majority."

221 No. —. HELENA, M. T., *Aug.* 7, 1871.

L. H. Hershfield & Bro., bankers, pay to J. P. Woolman, or bearer, fifty dollars.

$50. S. S. HUNTLEY,
For C. C. HUNTLEY.

Marked in ink: "For self."

No. —. HELENA, MONTANA, *Aug.* 1, 1871.

L. H. Hershfield & Bro., bankers, pay self, or order, twenty-five dollars.

$25. S. S. HUNTLEY,
For C. C. HUNTLEY.

Marked in ink: "Self."

No. —. HELENA, MONTANA, *July* 17, 1871.

L. H. Hershfield & Bro., bankers, pay self, or order, one hundred dollars.

$100. S. S. HUNTLEY,
For C. C. HUNTLEY.

Marked in ink: "For self."

CITY OF WASHINGTON, *January* 17, 1873.

Lewis Johnson & Co., bankers, pay to self, or bearer, one hundred dollars.

$—. S. S. HUNTLEY.

$162. WASHINGTON, D. C., *Jan'y* 18, 1873.

Lewis Johnson & Co., bankers, pay to S. S. Huntley, or order, one hundred and sixty-two dollars.

No. 1. C. C. HUNTLEY.

CITY OF WASHINGTON, *June* 22, 1872.

Lewis Johnson & Co., bankers, pay to S. S. Huntley, or bearer, one hundred and twenty-five dollars.

$125. C. C. HUNTLEY.

No. —. NEW YORK, *March* 23, 1871.

L. H. Hershfield & Bro., bankers, pay to L. H. Hershfield, or order, sixty-six 50-dollars.

$66.50. S. S. HUNTLEY,
For C. C. HUNTLEY.

Marked in ink: "Ch'ge S. S. H."

222 $94.50. WASHINGTON, D. C., *Oct.* 1, 1873.

Pay to the order of Lockwood, Hufty & Taylor ninety-four 50-100 dollars, value received, and charge the same to account of—

S. S. HUNTLEY.

To Lewis Johnson & Co., Washington, D. C.

No. —. HELENA, MONTANA, *Oct.* 19, 1871.

L. H. Hershfield & Bro., bankers, pay Sam Schwab, or order, fifteen 25-100 dollars.

$15.25. S. S. HUNTLEY,
For C. C. HUNTLEY.

Marked in ink: "Hotel acc't."

No. —. POUGHKEEPSIE, N. Y., *September* 19, 1873.

At sight, Lewis Johnson & Co., Washington, D. C., pay to the order of Geo. W. Cook two hundred and fifty dollars.

$250. S. S. HUNTLEY.

Marked in ink: "Poughkeepsie school."

No. —. WASHINGTON, D. C., *December* 31, 1871.

Lewis Johnson & Co., bankers, Washington, D. C., at sight, pay to A. F. Taylor, or order, one hundred and forty-one dollars.

$141. S. S. HUNTLEY.

To Lewis Johnson & Co., Washington, D. C.

Marked in ink: "Acc't S. S. H."

OFFICE OF THE SHERMAN HOUSE,

$100. CHICAGO, *Nov.* 27, 1872.

On demand, pay to the order of S. S. Huntley one hundred dollars.

C. C. HUNTLEY.

To Lewis Johnson & Co., Washington, D. C.

No. —. HELENA, MONTANA, *Dec.* 11, 1871.

L. H. Hershfield & Bro., bankers, pay note Kleinschmidt thirty dollars.

$30. C. C. HUNTLEY,
L. H. H.

223 HELENA, M. T., *July* 11, 1871.

Sixty days after date we, or either of us, promise to pay to the order of T. H. Kleinschmidt forty dollars, for value received, negotiable and payable without defalcation or discount, at the First National Bank of Helena, with interest at the rate of 4 per cent. per month from date until paid.

his
JOE x BOWEN.
mark.
$40. Due Sept. 10–13. S. S. HUNTLEY.
Witness: FERD. KEMETT.

CITY OF WASHINGTON, *April* 9, 1872.

Lewis Johnson & Co., bankers, pay to Wm. VanCampen, or order, two hundred dollars.
$200—two hundred. C. C. HUNTLEY.
Marked in ink: "S. S. H."

CITY OF WASHINGTON, *April* 10, 1872.

Lewis Johnson & Co., bankers, pay to order S. S. Huntley two hundred dollars.
$200—two hundred. C. C. HUNTLEY.
Marked in ink: "See mem." On back: "$200—$113.75—$86.25. S. S. Huntley. $113.75 for Middleton."

$122.20. WASHINGTON, D. C., *April* 8, 1873.

Lewis Johnson & Co., bankers, pay to S. S. Huntley, or order, one hundred and twenty-two 20–100 dollars.
C. C. HUNTLEY.

S. S. H., No. 14.

$6,000. WASHINGTON, D. C., *Jan'y* 31, 1873.

Lewis Johnson & Co., bankers, pay to S. S. Huntley, or order, six thousand dollars.
No. 3. C. C. HUNTLEY.
Marked in blue pencil: "D'ft at bank."

EXHIBIT REBUTTAL, No. 1.

CONCORD, N. H., *Octo.* 27, 1874.

S. S. HUNTLEY, Esq., *Washington, D. C.*

224 DEAR SIR: We acknowledge receipt of your favor, 24 inst., ($1,263,) enclosing draft, for which we hand you receipt in full for bills, July 10 and Octo. 19, '74.

Accept our thanks for the remittance.

Awaiting your further esteemed favors, we remain, yours, very truly,
ABBOT, DOWNING CO.
F. S. ABBOT, *Sec'y.*

P. S.—The two hacks we shall have ready to forward the last of this or the first of next, and will forward as you direct. We suppose the two buckboards will be shipped to same place and parties. Advise us, and oblige, y'rs, &c., A., D. CO.

EXHIBIT REBUTTAL, No. 2.

CONCORD, N. H., *October* 19, 1874.

Messrs. C. C. Huntley & Co., bought of Jas. R. Hill & Co., manufacturers of coaches, wagons, and carriages, Concord, New Hampshire.

Boston office, 32 Broad street. New York branch, 142 Bleeker street.

1 gig-wagon, style 13, pole and shafts; band 3421	$235 00
1 set 2-horse sil. stage harness	65 00
1 " able "	70 00
1 " B. P. "	38 00
	408 00
	855 00
	$1,263 00

EXHIBIT REBUTTAL, No. 3.

CONCORD, N. H., *Octo.* 27, 1874.

Received of S. S. Huntley, Esq., twelve hundred sixty-three dollars, in full for bills July 10 and Octo. 19, 1874.

ABBOT, DOWNING CO.,
Per F. D. ABBOT.

225 EXHIBIT REBUTTAL, No. 4.

Aug. 5, '72.	W. F. Chadwick, bet	$100 00
Sept. 3, '72.	Self, left town, check $600, $500	100 00
June 30, '71.	Sundry bills; check $166.50, $117.50	49 00
July 17, '71.	Self, for self	100 00
Aug. 1, '71.	Self, for self	25 00
Aug. 7, '71.	J. P. Woolman, for self	50 00
M'ch 23, '71.	L. H. Hershfield	66 50
Nov. 16, '70.	Sundry bills, check $500, $400	100 00
Oct. 14, '71.	Sundry bills, $114.55	52 25
Oct. 19, '71.	Sam. Scwab	15 25
Dec. 11, '71.	Kleinsmidt	30 00
Dec. 31, '71.	A. F. Taylor	141 00
Nov., '72.	S. S. H., at Sherman House, Chicago	100 00
Sept., '73.	Geo. W. Cook	250 00
Oct. 1, '73.	Taylor & Hufty	94 50
Sept. 1, '73.	S. S. H., for Ellville	277 43
Aug. 20, '73.	A. F. Taylor	75 00
April 8, '73.	S. S. H., Washington	122 20
M'ch 5, '73.	D. J. H.	150 00
Ap'l 9, '72.	Wm. Van Campen	200 00
Ap'l 10, '72.	Mem. check $200	86 25
June 22, '72.	S. S. H.	125 00
Oct. 3, '72.	Traphagen, H. & Co.	60 00
Oct. 5, '72.	A. F. Taylor	100 00
Jan. 17, '73.	S. S. H., self	100 00
Jan. 18, '73.	S. S. H.	162 00

Offered in evidence November 8th, 1880.

A. JOHNS, *Examiner.*

State.	Route.	Name of Contractor.	Quarterly Pay.	Collections.	Deductions.	Drafts.	
						Amount.	In whose Favor.
Nebraska	34137	A. E. Bradbury	$182 55				
	34140	A. E. Bradbury	103 38				
	34148	A. E. Bradbury	85 00				
	34149	A. E. Bradbury	60 00				
	34150	A. E. Bradbury	127 74				
Montana	36102	O. J. Salisbury	3,364 71			$3,364 71	G. H. B. White, cashier.
	36118	O. J. Salisbury	3,205 50			3,005 50	G. H. B. White, cashier.
	36120	L. Beveridge	305 00	$8 83			
	36134	A. E. Bradbury	97 50				
Wyoming	37104	S. S. Huntley	339 25				
	37105	James H. Gilbert	11,987 51	321 93		11,987 51	G. H. B. White, cashier.
Idaho	42107	S. S. Huntley	600 00	65 14			
	42110	C. W. Foster	1,401 46			1,401 46	G. H. B. White, cashier.
	42112	C. W. Foster	1,581 00	112 59		1,178 00	G. H. B. White, cashier,
	42111	J. J. Hinds	500 00			500 00	G. H. B. White, cashier.
	42113	L. H. Hershfield	497 50				
Wash. Ter.	43127	Peter McPhee	3,670 57			3,670 57	G. H. B. White, cashier.
	43128	James H. Gilbert	2,912 50			2,912 50	G. H. B. White, cashier.
	43133	A. E. Bradbury	156 25				
Oregon	45146	L. B. Church	1,312 50			1,312 50	G. H. B. White, cashier.
	44155	L. B. Church	618 75			618 75	G. H. B. White, cashier.
	44167	G. M. Brown	675 00			675 00	G. H. B. White, cashier.
	44169	A. E. Bradbury	225 00				

DEFENDANTS' EXHIBIT No. 2.

Dr. *C. C. Huntley in account with S. S. Huntley.* Cr.

1877.			
March 12.	To cash, personal ac't		$39,873 58
	To ½ ex. route No.	46151	754 26
	" "	37105	8,966 81
	" "	42103	575 00
	" "	42107	1,067 38
	" "	41132	6,051 77
	" "	42113	2,313 30
	" "	37110	511 00
	" "	36118	532 50
	" "	44135	2,888 55
	" "	44167	2,809 17
	" "	42110	1,375 00
	" "	42111	1,546 42
	" "	42112	2,689 46
	" "	43128	8,004 37
	" "	43127	13,613 32
	" "	34137	777 84
	" "	44146	1,011 98
	" "	44155	2,294 87
	" "	43133	603 25
	" "	37104	452 55
	" "	44169	592 87
	" "	33261	141 81
	" "	34150	208 97
228	" "	34148	178 82
	" "	34149	197 68
	" "	34140	215 84
	" "	33264	646 73
	½ Huntley & Co		48,976 55

1877.			
March 12.	By cash, personal ac't		$29,242 86
	½ receipts No.	46151	682 89
	"	37105	12,357 32
	"	42103	1,105 39
	"	42107	1,770 83
	"	41132	12,359 32
	"	42113	2,423 42
	"	37110	375 00
	"	36119	4,674 10
	"	36102	3,839 21
	"	36118	11,425 10
	"	36120	1,179 54
	"	44135	3,492 45
	"	44167	3,321 66
	"	42110	2,893 46
	"	42111	2,557 63
	"	42112	3,559 20
	"	43128	13,013 23
	"	43127	15,076 15
	"	34137	1,008 78
	"	36127	733 68
	"	44146	1,572 31
	"	44155	2,631 91
	"	43133	700 13
	"	36121	288 05
	"	37104	519 80
	"	44169	667 86
	"	33261	416 71
	"	36134	208 91

	Mon. ac't, per statement	15,626 78	
March 12.	To amount brought up		$165,498 45
	½ cost Evanston suits	500 00	
	Sundry bills not paid by check	3,638 71	
	Difference between ½ and ⅓ mail pay collected on six routes in Montana	2,945 75	7,084 46
	By balance		6,586 89
			$179,169 78

	By ½ receipts No. 34150		272 83	
March 12.	By amount brought up			$134,369 73
	By cash, ½ rec's	34148	237 32	
	" "	34149	165 07	
	" "	34140	198 73	
	" "	33264	363 97	
	" " Huntley & Co.		43,834 96	44,800 05
				$179,169 78

229 DEFENDANTS' EXHIBIT No. 3.

Original Bill. Filed January 31, 1878.

In the Supreme Court of the District of Columbia.

CHARLES C. HUNTLEY, Complainant,
vs.
SILAS S. HUNTLEY, Defendant. } In Equity. No. —.

To the supreme court of the District of Columbia, holding an equity court for said District:

The bill of complaint of Charles C. Huntley, of the District of Columbia, against Silas S. Huntley, of the same place, respectfully represents:

First. That the complainnat, Charles C. Huntley, is a citizen of the United States and a resident of the District of Columbia, and brings this suit in his own right.

Second. That the defendant, Silas S. Huntley, is a citizen of the United States and a resident of the District of Columbia, and is sued in his own right.

Third. That the complainant is now, and has been for many years past, engaged in the business of transporting the United States mails on various postal routes of the United States, under contract with the Post Office Department.

Fourth. That prior to the first day of July, 1874, said Silas S. Huntley was in his employ as manager and agent, and aided him in the transaction of his said business.

Fifth. That on or about the — day of ——, in the month of April, 1874, complainant and the said defendant became equally interested in certain contracts for carrying the mails on the postal routes enumerated and described in the annexed schedule, marked "Exhibit C. C. H., No. 1," filed herewith, and which is prayed may be taken and considered as a part hereof, and also entered into a verbal agreement, by and under the terms of which the mail pay and all receipts from said routes and the business conducted thereon should be equally divided between said complainant and the said defendant, after first deducting therefrom all the expenses necessarily incident to the conduct of said business.

230 EXHIBIT C. C. H., No. 1.

34137	Odessa, Neb., to New Helena, Neb.
34140	Orton to Clarksville, Neb.
34148	Central City to Harvard, Neb.
34149	Central City to St. Paul, Neb.
34150	Springdale to Albion.
36102	Virginia City to Bozeman, Mont.
36118	Helena to Bozeman, Mont.
36119	Helena to Lincoln, Mont.
36120	Helena to Diamond City, Mont.
36127	Missoula to Skalkaho City.

36134 Canton to Springville, Mont.
37104 Rawlings to Ferris, Wy. Ter.
37105 Green River to Camp Brown.
41132 Evanston, Wy., to Iowa Bar, Idaho.
42107 Rocky Bar to Atlanta, Idaho.
42110 Lewiston, Idaho, to Pine Grove, W. T.
42111 Lewiston, Idaho, to Pierce City, Idaho.
42112 Lewiston, Idaho, to Elk City, Idaho.
42113 Mount Idaho to Washington, Idaho.
43127 Waitsburgh, W. T., to Spoken Bridge, W. T.
43128 Walla Walla to Lewiston.
43133 Lewiston to Colfax.
44135 Roseburgh to Empire City, Oregon.
44146 Union to Wallowa, Oregon.
44155 Umatilla to Pleasant Grove, Oregon.
44167 Canyon City to Scott's, Oregon.
44169 Linkville to Linkville, Oregon.

Sixth. That the transportation of the mails on said routes was to begin on the first day of July, 1874, but before that day the said complainant was afflicted with a sudden and grievous illness, which rendered it impossible for him to give any attention whatever to the said business, and made it necessary for him to surrender and commit the same to the exclusive care of the said defendant, and executed to him powers of attorney and other authorizations which placed completely in his power and made subject to his disposition all the interests of this complainant in respect of said contracts, and all of his personal property of whatever kind.

231 Seventh. That since the said first day of July said defendant has had the exclusive control and management of said business, and has received the proceeds thereof, and disposed of the same as he thought proper, except that the moneys which have become due on routes numbered 36119, 41132, 44135, and 36127 since the first day of July have been paid to this complainant.

Eighth. That the said defendant has received from the said contracts and from the conduct of said business very large sums of money, the precise amount of which is to this complainant unknown, and for which he has failed and refused, and still refuses, to render to this complainant any exact and proper account, and has also failed and refused, and still refuses, to pay over to this complainant his proper share thereof, although admitting that there are due and payable to him (this complainant) large sums of money, which he retains and has appropriated to his own use.

Ninth. That the complainant is entitled to a full discovery of all said defendant's doings in respect of said contracts and each of them, and under the authority conferred upon him as aforesaid, and to a full and accurate accounting for all moneys received and expended by him appertaining to said mail routes, and the transportation of the mails and passengers thereon, and appertaining to the personal property of this complainant, which came into his possession as aforesaid.

Tenth. That the said defendant owns no property of any considerable value which could be reached by an execution at law, and has no pecuniary means or property of any sort with which to make good the claims of this complainant upon him.

Eleventh. That the said contracts cease and expire on the first day of July, 1878, and if the moneys that will become due and payable thereon up to that time are received by the said defendant they will be entirely lost to this complainant, and diverted to purposes foreign to said agreement between said complainant and said defendant.

Twelfth. That the defendant should be enjoined from receiving any further sums of money in respect of said contracts on said routes, and each and every of them.

Thirteenth. That the complainant is remediless at law.

Wherefore this complainant prays—

232 1. That the said defendant make full discovery of all his proceedings and doings in respect of said contracts and postal routes and each of them.

2. That an accounting may be had between said complainant and said defendant of all sums of money that have been received by said defendant and paid out by him in respect of said routes, and of his transactions concerning the same, as well his profits as losses thereon.

3. That the said defendant, his agents, attorneys, and assigns, may be restrained by injunction from this honorable court from receiving any sum or sums of money from the United States, or any officer thereof, or from any other person or persons, in respect of said contracts and postal routes, and each of them.

4. That complainant may have such other and further relief as the nature of this case may require and as the court may be able to grant.

5. That the writ of subpœna may be issued, requiring the defendant to appear and make answer hereto at a time to be designated by the court.

6. That the writ of injunction may be issued from the honorable court, enjoining the said defendant, his agents, attorneys, and assigns, from receiving any sum or sums of money in respect of said contracts and said postal routes, or either of them, and from making any assignments or issuing any order or executing any power in respect thereof.

C. C. HUNTLEY.

I do solemnly swear that I have heard read the bill by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

C. C. HUNTLEY.

Subscribed and sworn to before me this 31st day of January, A. D. 1878.

HENRY R. ELLIOTT,
U. S. Comm'r for the Dist. of Col.

233 *Subpœna to Answer.*

In the Supreme Court of the District of Columbia, the 31st day of January, 1878.

CHARLES C. HUNTLEY, Complainant,
against
SILAS S. HUNTLEY, Defendant. } No. 6075. Eq'y Doc.

The President of the United States to Silas S. Huntley:

You are hereby commanded to appear in this court, at its first special term occurring twenty days after service of this subpœna, and answer the exigency of the bill this day filed, entitled as above, under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk*.

MEMORANDUM: That the defendant, herewith served, is to enter his appearance in this suit in the clerk's office on or before the day at which this writ is returnable, otherwise the bill may be taken for confessed.

Return on Subpœna.

Summoned defendant Feb. 1, 1878.

F. DOUGLASS, *Marshal*.

Leave to Amend Bill. Filed Feb. 13, 1878.

On the motion of the solicitor for the plaintiff it is ordered by the court, this 13th day of Feb'y 1878, that the plaintiff has leave to file his amended bill.

By the court: MACARTHUR, *Justice*.

Amended Bill. Filed Feb. 13, 1878.

To the supreme court of the District of Columbia, holding an equity court for said District:

The petition of Charles C. Huntley respectfully represents:

234 That your petitioner having filed his bill in your honorable court, the defendant has not appeared thereto, and your petitioner is advised to amend the said bill and to correct certain mistakes therein.

Your petitioner therefore prays that he may amend his said bill by inserting therein, after the fifth paragraph of said bill, the words and figures following:

That the averments made in the fifth paragraph of said bill relate exclusively to route No. 36102, from Virginia city to Bozeman, Montana, in which route the said defendant and this plaintiff have each one-third interest.

To route 36118, from Helena to Bozeman, Montana, in which route the said defendant and this plaintiff have each one-third interest.

To route 36127, from Missoula to Skalkaho, in which said route the said defendant and this plaintiff have each one third interest.

And to route 37105, from Green river to Camp Brown, Wyoming Territory, in which said route the said defendant and this plaintiff have each one-half interest.

And that in said other routes enumerated in said schedule, to wit:

Route.	Territorial Points.
34137.	Odessa, Neb., to New Helena, Neb.
34140.	Orton to Clarksville, Neb.
34148.	Central City to Harvard.
34149.	Central City to St. Paul.
34150.	Springdale to Albion, Neb.
36119.	Helena to Lincoln, Mont.
36120.	Helena to Diamond City, Mont.
36134.	Canton to Springfield, Mont.
37104.	Rawlings to Ferris, Wyo. Ter.
41132.	Evanston, Wyo., to Iowa Bar, Idaho.
42107.	Rocky Bar to Atlanta, Idaho.
42110.	Lewiston, Idaho, to Pine Grove, W. T.
42111.	Lewiston, Idaho, to Pierce City, Idaho.
42112.	Lewiston, Idaho, to Elk City, Idaho.
42113.	Mount Idaho to Washington, Idaho.
43127.	Waitsburgh, W. T., to Spoken Bridge, W. T.
43128.	Walla Walla to Lewiston, W. T.
43133.	Lewiston to Colfax.
	44135. Roseburgh to Empire city, Or.
235	44146. Union to Wallowa, Or.
	44155. Umatilla to Pleasant Grove, Or.
44167.	Canyon City to Scott's, Or.
44169.	Linkville to Linkville, Or.

the said defendant has not now, nor has he ever had, any interest whatever.

That this plaintiff furnished all the moneys placed on preliminary deposit and all the securities that were given in respect of the bids on which said contracts were made.

And this plaintiff alone is now, and has been since said contracts were entered into, in justice and equity entitled to have and receive all moneys heretofore due and that are now due, and that may hereafter become due, in respect of said contracts and routes, and each of them.

That in addition to said routes the said defendant, in the spring of 1877, obtained in his, the said defendant's, own name a contract for the transportation of the mails on route No. 36136, from Bozeman to Tongue river, Montana.

That the said road was stocked and the mails thereon transported by the aid of money received by the said defendant from the routes hereinbefore enumerated, which belonged to this plaintiff alone, and that this plaintiff is entitled to an equal interest with the said defendant in said route and in the proceeds thereof.

That this plaintiff admits that there is due to said defendant for his services in attending to the business of said routes and the execution of said contracts a fair and reasonable compensation, which, he submits, should be fixed by the court at the final hearing of this case.

C. C. HUNTLEY.

NATH'L WILSON, *Sol. for Pl'ff.*

DISTRICT OF COLUMBIA:

Charles C. Huntley, being first duly sworn, deposes and says: That he has read the foregoing amendment of the bill subscribed by him and knows the contents thereof; that the facts therein stated as of his own knowledge are true, and those stated upon information derived from others he believes to be true.

C. C. HUNTLEY.

Subscribed and sworn to before me, this sixth day of February, A. D. 1878.

SAM. L. MATTINGLY,
Notary Public.

236 *Injunction Awarded.*

This cause coming on to be heard, on the motion for an injunction and the appointment of a receiver, it is ordered and decreed by the court in equity, sitting this 6th day of July, 1878, that the defendant, Silas S. Huntley, his attorneys, agents, servants, and assigns, be, and they and each of them, and the said defendant be, and he and they are, hereby enjoined from demanding, receiving, or receipting for the moneys due from the United States for the transportation of the United States mails for the quarter ending June 30, 1878, on the postal routes hereinafter designated and enumerated, and also from making any draft or order on said pay, and from receiving any draft, check, warrant, or order that may be issued in respect of the pay due for said quarter on said routes, which are as follows:

Route No. 36102, from Virginia City to Bozeman.
36118, from Helena to Bozeman.
36127, from Missoula to Skalkaho.
37105, from Green River to Camp Brown.
34137, from Odessa to New Helena.
34140, from Orton to Clarksville.
34148, from Central City to Harvard.
34149, from Central City to St. Paul.
34150, from Springfield to Albion.
36119, from Helena to Lincoln.
36120, from Helena to Diamond City.
36134, from Canton to Springfield.
37104, from Rawlings to Ferris, Wyo. Ty.
41132, from Evanston to Iowa Bar.
42107, from Rocky Bar to Atlanta.

42110, from Lewiston to Pine Grove.
42111, from Lewiston to Pierce City.
42112, from Elk City to Lewiston.
42113, from Mount Idaho to Washington.
43127, from Waitsburgh to Spoken Bridge.
43128, from Walla Walla to Lewiston.
43133, from Lewiston to Colfax.
44135, from Roseburg to Empire City.
44146, from Union to Wallowa.
44155, from Umatilla to Pleasant Grove.
44167, from Cannon City to Scott's.
44169, from Linnville.

237 And this injunction is to remain in force until the further order of the court.

And it is further ordered that Nathaniel Wilson and William F. Mattingly be, and they are hereby, constituted and appointed receivers in this cause, with authority to demand, receive, and receipt for the moneys due from the United States and from the Post Office Department for the transportation of the mails on said routes and each of them, for the quarter ending June 30, 1878, and to pay from the moneys so received the moneys due, and that may become due, to the sub-contractors on said routes, or any of them, and to retain whatever may remain of said moneys, after paying the sub-contractors, subject to the further order of the court; and the said receivers are further authorized, out of the moneys so received by them, to pay all expenses and costs necessarily incident to the carrying the mails on said routes.

By the court: MACARTHUR, *Justice.*

Order for the Payment of Money to George H. B. White, Cashier.

It is ordered by the court, in equity sitting, this 31st day of July, 1878, with the consent of the solicitors for the plaintiff and defendant, that the money specified in the schedule hereunto attached may be paid to George H. B. White, as cashier of the National Metropolitan Bank, to be held by him subject to the order of this court, or to the joint order of the receivers herein appointed.

DAVID C. HUMPHREYS, *Justice.*

We consent to the entry of the foregoing order.

NATH'L WILSON,
Sol. for Plaintiff.
W. F. MATTINGLY,
Sol. for Defendant.

State.	Route.	Name of Contractor.	Quarterly Pay.	Collections.	Deductions.	Drafts.	
						Amount.	In whose favor.
Montana	36102	O. I. Salisbury	$3,364 71			$3,364 71	G. H. B White, cashier.
	36118	"	3,005 50			3,005 50	" "
Wyoming	37105	James H. Gilbert	11,987 51	$321 93		11,987 51	" "
Idaho	42110	C. W. Foster	1,401 46			1,401 46	" "
	14112	"	1,581 00	112 59		1,178 00	" "
	1411	J. J. Hinds	500 00			500 00	" "
Wash. Territory	43127	Peter McPhee	3,670 57			3,670 57	" "
	43128	James H. Gilbert	2,912 50			2,912 50	" "
Oregon	44146	L. B. Church	1,312 50			1,312 50	" "
	44145	"	618 75			618 75	" "
	44167	G. M. Brown	675 00			675 00	" "

239 *Defendant's Answer. Filed December 4, 1878.*

In the Supreme Court of the District of Columbia.

CHARLES C. HUNTLEY
vs.
SILAS S. HUNTLEY. } No. 6075. Equity.

The answer of the defendant, Silas S. Huntley, to the original and amended bills of complaint of Charles C. Huntley, against him in equity, exhibited.

For answer to said bill, or so much thereof as I am advised it is material and proper for me to make answer unto, answering, I say as follows:

First and Second. I admit the averments in these two paragraphs of the original bill as to the residence of the parties to be true.

Third. I admit that the complainant is now, and has been for many years, engaged in the business of transporting the U. S. mails on various postal routes of the U. S. under contracts with the P. O. Dept.

Fourth. I admit that prior to July 1, 1874, I was in the employment of the complainant as manager and agent, and aided him in transaction of his said business; and aver that I was also in partnership with him in a number of routes.

Further answering this paragraph of the bill, I aver and say that I had been so in the employment of the complainant for a period of about eight years prior to said July 1, 1874, devoting my time and attention exclusively to the management and conduct of said business, from which the complainant realized profits exceeding $500,000. During this period I did not receive compensation for my services, and some time prior to July 1, 1874, all matters were settled between us by the complainant agreeing, as compensation for my services, to purchase for me of J. W. Parker an interest, being one-sixth, in the Northwestern Stage Line, thus making us, with the interest held by the complainant in said routes, equal copartners therein. The complainant did make said purchases, which included dividends accruing due therefrom, which he drew; but the amount of which is unknown to me, and in which I had no interest.

240 On said Northwestern Stage Co. and Oregon and California routes our losses for the first fifteen months amounted to about $29,000, for which we gave three joint notes, two for $10,000 each and one for the balance. I sold our interest in the Oregon and California routes for $20,000, which I paid to Bradley Barlow, who held these notes, and took his receipt for the same, to be applied on these notes.

It was further agreed between us in January, 1874, that we should be equal partners in certain mail contracts then advertised by the P. O. Dept., and in certain bids for such contracts, service on which was to begin July 1, 1874, and which it was then expected we would acquire. In certain Montana contracts, to wit, routes numbered 26102, 36118, and 36127, it was agreed that we should take in a third party, one P. B. Clark, and that the profits should be equally divided between the three of us.

Fifth. I admit that we became equally interested in certain contracts for carrying the mails on the postal routes enumerated in schedule filed with plaintiff's bill, marked Exhibit C. C. H., No. 1, except that in the routes named in the preceding paragraphs of this answer as Nos. 36102, 36118, and 36127, in which we each had a one-third interest, as also in routes Nos. 36120 and 36134.

In all other routes named in said schedule, as well as certain routes not named therein, to wit, Nos. 46151, 42103, 37110, 33261, and 33264, we were equally interested in the profits and losses as copartners.

Said routes numbered 46151, 37110, and 33261 have been discontinued.

And service on all of said routes ended under contracts with the P. O. Dept. on the 30th of June, 1878.

Sixth. I admit that service on said routes was to begin on July 1st, 1874, and that prior to that date the complainant was afflicted with a serious illness, which rendered it impossible for him to give any attention whatever to said business, and threw the whole burden and management of the same on this defendant.

The complainant did execute to me certain powers of attorney, but inasmuch only the contracts for four of said routes were in his name, said powers of attorney were otherwise unnecessary and unavailable. Said powers of attorney on said four routes were
241 subsequently revoked by the complainant, and five quarters pay therefor have been collected by him.

I have charged him in my account with my one-half of the profits thereon, being equally interested with him therein, and the same are enumerated in said Exhibit C. C. H., No. 1. As long as money was lost on said routes I paid my share of the losses.

The other of said contracts were in the name of other parties, some of them being in my own name.

Said contracts were obtained through my own personal exertions, many of them in the year 1875, through the failure of other contractors to whom the same had been awarded, and without the knowledge [of] the complainant. And many of said contracts, although belonging to us, were taken at my instance in the names of other parties, and I could readily have secured the entire profits from said contracts myself.

Seventh. I admit the averments of this paragraph of the bill as heretofore answered by me.

Eighth. I admit having received and disbursed large sums of money on account of these contracts, and deny that I have refused to render to the complainant proper accounts thereof. My books have always been open to inspection by him. I deny that I have retained any moneys unjustly and have appropriated the same to my use. Since July 1, 1874, I have paid to the complainant and for his account large sums of money; he drew on me so fast that I was compelled to refuse to accept his drafts, and thereafter paid him $500 per month until he revoked his powers of attorney on the four routes named, being all of said contracts that stood in his name.

Ninth. I file herewith true and accurate statements of account of all of said routes and of the account between the complainant and myself, marked Exhibit- S. S. H., No. 1, No. 2, and A, B, C, as part of this my answer.

Tenth. I deny that I have no property subject to execution at law, and that I have no pecuniary means to make good any lawful claim which the complainant may have against me.

Further answering said bill, I say that at the time said agreement of copartnership was entered into, the understanding was that the complainant, as well as myself, was to devote his time and
242 attention to the prosecution of said business; but that prior to July 1, 1874, up to the expiration of said contracts, he has devoted no attention whatever to the same. And I claim that I am entitled to a reasonable compensation for the loss of his services in connection with the prosecution of said business and the extra labor thereby thrown on me. In addition to this I claim an allowance for expenses necessarily incurred and paid by me on joint account in the prosecution of said business, which amounted for the four years to the sum of $15,000.

In answer to said amended bill, I admit that in said routes 36102, 36118, and 36127, the plaintiff and myself have each a ½ interest; and that in said route No. 37105 we each have a ½ interest. But I deny that in the other routes enumerated in said amended bill I have not and never had any interest whatever; on the contrary, I ever said that routes 36120 and 36134 we each have ⅓ interest, and in all the rest we each have a ½ interest, as heretofore stated by me.

No money was placed or required on any of the said routes, with possibly some few exceptions; certified checks were deposited, procured on security given by both of us. I deny that the plaintiff furnished all the securities that were given in respect of the bids on which said contracts were made. Said securities were furnished by both of us.

I deny that the plaintiff alone has been, since said contracts were entered into, in justice and equity entitled to receive all moneys due and to become due in respect of said contracts and routes.

I admit that in 1877 I obtained a contract in my own name for the transportation of the mails on route No. 36136, but I deny that said route was stocked and the mails thereon transported by the aid of any money in which the plaintiff had the slightest interest. I neither used for that purpose any money belonging to the plaintiff or to the firm, but used my own money solely, and I deny that the plaintiff is entitled to any interest whatever in said contract. Said contract, instead of resulting in a profit to me, has occasioned a loss of from $1,500 to $2,000. On some sixteen of said routes during the first year we were incurring a loss of about $3,400, the pay received from the Department being $48,428, and the cost to us being $51,840.

By my exertions and close personal attention the pay on the
243 routes by the Department was increased in the last twelve or fifteen months to $84,722.67, and the cost of running the routes to $48,136.48.

On others of said routes I succeeded in having the pay by the Department increased from $10,000 in 1874, until in 1878 it amounted to $74,228.88.

In respect of said sixteen routes it was only during the last fifteen months of these contracts that they became profitable, and it was not until said complainant ascertained that they were profitable that he denied I was a copartner with him therein, having theretofore admitted that I was such copartner.

The other routes referred to we were running ourselves at a loss for about two years, not being sublet, as were the others above mentioned.

All the profits from the aforesaid contracts have been realized without any attention thereto on the part of the complainant, and solely through my own exertions and close and devoted attention to the business.

And I claim that I should be entitled to at least the sum of $20,000 for the loss of the plaintiff's services during the said four years, and for the extra labor thrown upon me thereby.

Further answering, I aver and say that in the stock, property, and effects of the said Northwest Stage Company and the mail routes operated by it for the four years prior to June 30, 1878, one Bradley, Barlow & Smith were interested to the extent of two-thirds and the complainant and myself to the extent of one-third. Under the written terms of agreement between the said Bradley, Barlow, Smith and the complainant and myself, said Barlow had full power and authority to collect the pay on said routes operated and to be operated by said company during the contract term ending June 30, 1878, for the benefit of the parties named in said agreement, in the proportions stated therein, the proportion of the said C. C. Huntley and myself being one-third.

That said Barlow has accordingly collected from the Post Office Department all the pay for transportation of the mails on the routes operated by said company, and has refused to render the account thereof, or to make any settlement of the same. My interest in the profits of said company in the hands of said Barlow is one-sixth, and said Barlow refuses to account to me therefor, or to make
244 payment of the same, stating that he had made large payments to the complainant, and intimating that there would be nothing coming to me. I accordingly claim to have the moneys remain in the hands of the receivers until it can be ascertained what amount has been paid to the complainant from this source to which I may be entitled, denying at the same time the right of the said Barlow to pay to the complainant any portion of my said one-sixth interest. The complainant is largely indebted to said Barlow on private account, for which, as I am informed and believe, said Barlow holds mortgages on the complainant's property; and I believe that a personal decree against said complainant would be unavailable, and that he is practically insolvent. Since the statements of account were made out I have received notice of the following amounts which I am liable to pay on firm account, viz:

246 *C. C. Huntley in account with S. S. Huntley.*

1877.					
Dec. 31.	To amount of personal account		$42,891 08	By amount personal account	$29,242 86
	To amount paid Nath'l Wilson		1,000 00	" paid sub-contractor on No. 44135	6,250 00
	To cash draft		1,200 00	" " " 36119	2,250 00
	To cash for account of		3,638 71	" " " 36127	2,000 00
	To cash, half cost of Evanston line		500 00	" " " 41132	8,412 50
	Montana account, per Schedule A		4,492 30	By one-third interest Montana routes	22,674 22
	" " " B		15,626 78	By one-half difference, routes sublet	68,575 76½
	" " " C		2,948 28		
	To mail pay, 5 qrs. route 44135		7,485 00		
	" " 36118		4,837 50		
	" " 36127		5,250 00		
	" " 41132		17,006 90		
	One-third amount paid Abbott, D & Co., 3608		355 00		
	One-half account Huntley & Co.		12,256 28		
	Balance		19,917 51		
					$139,405 34
	Amount claimed for loss of C. C. H.'s services, and extra labor thrown on S. S. H.		$20,000 00	By balance as above	$19,917 54

247 *C. C. Huntley to Montana Acc't.*

1877, March.

To check—A. J. Davidson		$16 75
	Expense	100 00
	N. Johnson	69 27
	Hildebrand & Co.	178 61
	Expense	150 00
	Geo. P. Robinson	74 00
	H. N. Starkweather	28 00
	Wm. Moffett	55 85
	Expense	300 00
	Expense	350 00
	Collections used	335 65
	Oats	44 17
	R. S. Hale	124 45
	Repairs	331 81
	Clark, C. & Co.	108 45
	T. C. Power	30 00
	Markham	47 75
	Geo. Butler	34 50
	J. R. Weston	39 00
	Blacksmith	125 00
	Driver	150 00
	Johnson	36 50
	Wiser	65 00
	Henry Miller	66 50
	Kinna & Jack	15 37
	Blackford	176 00
	Shirley	60 00
	Chas. Markham	40 00
	Expense	300 00
	Expense	115 06

1877, June 28.

To check—Rich & Wilson		298 70
	Telegram	2 50
	Repair stable	96 00
	Repair bill	314 19
	Expense road	432 44
	Clark, C. & Co.	156 31
	Chas. Lehman	47 15
	Chas. Markham	63 35
	Jno. Toombs	55 00
	Alex. Beard	130 00
	H. Moott	129 00
	Telegram	2 50
	Grain	1,862 50
	Hay	317 00
	Chas. Markham	200 00

C. C. Huntley to Montana Acc't—Continued.

248 1877, June 28.

To check—Chas Markham		$851 50
Expense		629 16
Expense		250 00
Expense		310 22
Alex. Beard		94 68
Ira Mott		150 00
Coal		50 00
Interest		73 30
Repair		6 00
Telegram		2 75
Hay		245 00
Clark, C. & Co.		165 83
Grain		110 00
Expense		197 00
C. C. Power		378 89
Grain		700 00
Hay		300 00
Tax		24 80
Grain		500 00
Tax		24 80
Telegram		8 60
Weston		103 37
Beveridge		256 00
Blacksmith		300 68
Interest		195 00
Whitehead	450 00	
	$450 00	
		$12,801 91
		450 00
		$13,251 91
To ⅓ of acc't, $12,801.91		$4,267 30
To ½ of acc't, $450		225 00
		$4,492 30

249 WASHINGTON, D. C., *Mar.* 12, '77.

Mr. C. C. Huntley to Montana Acc't.

Date.			½ int.	Whole int.	½ int.
1874.					
June	25	To check of Clark			$1,000 00
	26	"			400 00
	29	"			250 00
July	6	"			25 00
Aug.	15	"			350 00
	17	"			40 00
		" Hershfield to Galen		$2,292 50	
		" " Whitehead		500 00	
		" d'ft of Glover	$100 00		
Sep.	5	" by Hershfield, Blake		500 00	
		" " "		75 00	
	16	" d'ft of Glover	201 00		
	24	" by Clark			60 00
	26	" "			490 00
Oct.	2	" "			3 00
Nov.	2	" "			5 00
	10	" "			200 00
	18	" Hershfield	450 00		
	28	" "		23 00	
Dec.	1	" Clark			3 00
1875.					
Jan.	18	" Bradbury	50 00		
	26	" "	350 00		
Feb.	1	" Clark			11 58
	8	" Hershfield	6 50		
	11	" Clark			800 00
		" "			2 00
M'ch	1	" Hershfield		34 00	
		" Clark			1 00
Feb.	5	" Hershfield	450 00		
	7	" Clark			7 72
		" for int.			394 25
Apr.	11	" of Clark			2 50
	22	" "			85 00
	27	" "			35 00
May	15	" for mail pay	450 00		
June	3	"			2 50
	19	"			4 25
1874.					
Nov.	4	"			1,000 00
	21	"			83 33
Dec.	2	"			204 00
	9	"			40 00
		"			360 27
	26	"			100 00
		Carried forward	$2,057 50	$3,424 50	$5,959 40

250 *Mr. C. C. Huntley to Montana Acc't*—Continued.

Date.			½ int.	Whole int.	⅓ int.
1875.					
Dec.	26	To am't brought forward	$2,057 50	$3,424 50	$5,959 40
Jan.	25				700 00
	29				50 00
Feb.	23	" Skalkaho Route			157 52
	27	" of Clark			300 00
		" for int.			129 25
Mch.	1	" of Clark			11 50
	26				400 00
May	19				540 87
		" Skalkaho Route			205 33
July	6	" of Clark			100 00
	20	" " "			400 00
		" for int.			203 50
Aug.	16	" of Hershfield	450 00		
	18	" Clark			200 00
		" Skalkaho Route			144 00
	21	" of Hershfield	24 00		
Sept.	14	" Hamilton		300 00	
Oct.	19	" of Clark			54 10
	20				129 00
					40 61
					110 47
					85 50
					44 00
					75 55
					202 50
					275 00
					230 00
					200 14
					64 31
					15 00
					114 24
					40 00
					50 00
	27				180 00
Nov.	16	" of Hershfield	450 00		
	26	" of Clark			600 00
	27				34 80
					60 00
Dec.	6				250 00
					61 00
	8				126 91
	11	" Hershfield	49 00		
	13	" Clark			200 00
					41 84
	18				128 97
		" of Clark			180 90
		Carried forward	$3,030 50	$3,724 50	$13,096 2

251 *Mr. C. C. Huntley to Montana Acc't*—Continued.

Date.			½ int.	Whole int.	⅓ int.
1875.					
Dec.	18	To am't brought forward	$3,030 50	$3,724 50	$13,096 21
	30				1,500 00
	31				318 00
1876.					
Jan.	10				135 00
	14				102 55
	17				200 00
					130 00
	18				250 00
	15	" Hershfield	450 00		
Feb.	16	" Clark			200 00
	18				134 00
					79 00
	19				160 00
M'ch	3				550 00
	4				96 00
	6				40 00
		" for interest			435 57
	11	" of Clark			4 50
	14				200 00
	23				70 00
	25				100 00
	30				800 00
	31				100 00
Apr.	10				410 78
	15				200 00
	21				63 00
May	1				180 00
	3				100 00
					130 00
May	3	" Check for interest			150 53
	17	" " of Hershfield	450 00		
June	27	" " Clark			70 13
July	6	" " Hershfield	24 00		
	17	" " Clark			450 00
					350 00
					32 55
Aug.	1				41 38
	17	" " Hershfield	450 00		
Sep.	27	" " Clark			150 00
	29				50 00
	30	" " for interest			158 64
Oct.	19	" " of Clark			600 00
	28				14 00
Nov.	1				2 50
	2				64 50
					1,750 00
		Carried forward	$4,404 50	$3,724 50	$23,668 84

252 *Mr. C. C. Huntley to Montana Acc't*—(Continued.)

Date.		½ int.	Whole int.	⅓ int.
1876.				
Nov. 2	To am't brought forward	$4,404 50	$3,724 50	$23,668 84
3				70 00
17				108 75
18				82 63
23	" Check Hershfield	450 00		
29	" " Clark			15 00
				27 25
Dec. 2				100 00
5				12 00
				21 45
9				51 50
11				18 00
12				128 55
14	" Check of Clark			135 00
				110 00
15				269 06
				200 00
				78 52
				10 00
1877.				120 00
Jan. 8				61 84
9				200 00
11				50 00
19				451 26
20				200 00
22				98 61
				50 00
				279 35
				16 50
				25 16
				80 00
24				37 25
25				146 50
27				200 00
Feb. 1				58 33
				50 00
6				45 00
12				90 00
15				51 24
	" Check Hershfield	450 00		
20	" " for interest			334 45
		$5,304 50	$3,724 50	$27,750 09
		$2,652 25	$3,724 50	$9,250 03

To personal interest payments by Hershfield & Co	$3,724 50
" one-half " " " " " "	2,652 25
" one-third " " " " " "	9,250 03
Total	$15,626 78

253 *C. C. Huntley to Montana Acc't, L. H. H. & Bro.*

1878, Jan. 21.		
To check—Road, to ⅓ int.		$564 54
Board		181 00
Driver		48 00
Road		43 97
Work		123 00
Board		64 00
Blacksmith		131 50
Work		146 00
Board		52 00
Work		90 00
Work		17 88
Driver		64 18
Work		27 00
Work		6 00
Work		125 00
Grain		281 18
Interest		132 65
Herding		100 75
Road		190 00
Grain		260 00
Work		112 00
Board		146 00
Road		611 85
Blacksmith		436 65
Harness		22 00
Grain		148 95
Road		600 00
Blacksmith		162 00
Work		200 00
Supplies		67 13
Supplies		22 13
Driver		150 00
1878, Apr. 3.		
To check—Work		85 00
Road		64 54
May 25.		
To check—Driver		150 00
July 1.		
To check—Road		133 61
Road		462 24
Road		180 00
Attorney		105 00
Road		11 75
Board		72 75
254 Repairs		135 00
Supplies		20 15
Grain		218 58
Repairs		555 46

252 *Mr. C. C. Huntley to Montana Acc't*—(Continued.)

Date.		½ int.	Whole int.	⅓ int.
1876.				
Nov. 2	To am't brought forward	$4,404 50	$3,724 50	$23,668 84
3				70 00
17				108 75
18				82 63
23	" Check Hershfield	450 00		
29	" " Clark			15 00
				27 25
Dec. 2				100 00
5				12 00
				21 45
9				51 50
11				18 00
12				128 55
14	" Check of Clark			135 00
				110 00
15				269 06
				200 00
				78 52
				10 00
1877.				120 00
Jan. 8				61 84
9				200 00
11				50 00
19				451 26
20				200 00
22				98 61
				50 00
				279 35
				16 50
				25 16
				80 00
24				37 25
25				146 50
27				200 00
Feb. 1				58 33
				50 00
6				45 00
12				90 00
15				51 24
	" Check Hershfield	450 00		
20	" " for interest			334 45
		$5,304 50	$3,724 50	$27,750 09
		$2,652 25	$3,724 50	$9,250 03

To personal interest payments by Hershfield & Co	$3,724 50
" one-half " " " " " "	2,652 25
" one-third " " " " " "	9,250 03
Total	$15,626 78

253 *C. C. Huntley to Montana Acc't, L. H. H. & Bro.*

1878, Jan. 21.		
To check—Road, to ⅓ int.		$564 54
	Board	181 00
	Driver	48 00
	Road	43 97
	Work	123 00
	Board	64 00
	Blacksmith	131 50
	Work	146 00
	Board	52 00
	Work	90 00
	Work	17 88
	Driver	64 18
	Work	27 00
	Work	6 00
	Work	125 00
	Grain	281 18
	Interest	132 65
	Herding	100 75
	Road	190 00
	Grain	260 00
	Work	112 00
	Board	146 00
	Road	611 85
	Blacksmith	436 65
	Harness	22 00
	Grain	148 95
	Road	600 00
	Blacksmith	162 00
	Work	200 00
	Supplies	67 13
	Supplies	22 13
	Driver	150 00
1878, Apr. 3.		
To check—Work		85 00
	Road	64 54
May 25.		
To check—Driver		150 00
July 1.		
To check—Road		133 61
	Road	462 24
	Road	180 00
	Attorney	105 00
	Road	11 75
	Board	72 75
254	Repairs	135 00
	Supplies	20 15
	Grain	218 58
	Repairs	555 46

July 1.

To check—Road	$151 00
Supplies	52 23
Hay	215 00
Driver	150 00
Road	322 59
Taxes	30 00
Supplies	185 32
Interest	87 28
1878, July 22.	
To check—Road	160 00
	$8,844 86

Receipt for $13,611.61.—*Amounts required to pay Co. indebtedness, 2d qr., '78.*

Route 37104	$200 00
42107	284 86
42110	320 05
42111	302 52
42112	1,269 01
42113	475 00
43127	1,674 24
43128	1,332 95
43133	125 00
44146	422 30
44155	400 43
44167	537 50
44169	200 00
34137, 34148, 34149, 34150	567 75
36102, 118, 120, 134	2,500 00
37104, 105	3,000 00
	$13,611 61

255 WASHINGTON, D. C., *Sept.* 16, 1878.

Received of Nath'l Wilson and William F. Mattingly, receivers, thirteen thousand six hundred & eleven & $\frac{61}{100}$ dollars, being amount necessary to pay sub-contractors and expenses on the within-mentioned routes.

$13,611.61. S. S. HUNTLEY.

Report of Receivers. Filed Jan. 3d, 1880.

In the Supreme Court of the District of Columbia.

C. C. HUNTLEY
vs.
S. S. HUNTLEY. } No. 6075. Equity.

To the honorable the justices of the supreme court of the District of Columbia, sitting in equity:

Nathaniel Wilson and William F. Mattingly, receivers in the above-entitled cause, respectfully report to the court that they have collected from the General Post-Office Department for the transportation of the mails for the quarter ending June 30th, 1878, on the routes named in the order appointing them receivers, the sum of twenty-eight thousand one hundred and thirty dollars and seventy-five cents, ($28,130.75,) and have paid out under said order for sub-contractors on said routes the sum of thirteen thousand six hundred and eleven dollars and sixty-one cents, ($13,611.61,) leaving a balance in their hands of fourteen thousand five hundred and nineteen dollars and fourteen cents, ($14,519.14.) They respectfully ask that their account be settled and stated by the auditor of the court.

NATH'L WILSON.
WM. F. MATTINGLY.

Subscribed and sworn to before me, this 31st day of December, A. D. 1879.

[SEAL.] W. E. WILLIAMS,
U. S. Com'r, District of Col.

256 *Order of Ref. to Aud. of Receivers' Report. Filed Jan. 3, 1880.*

In the Supreme Court of the District of Columbia

C. C. HUNTLEY
vs.
S. S. HUNTLEY. } No. 6075. Equity.

By the consent of parties to this cause, it is, this 3d day of January, A. D. 1880, ordered that the report of the receivers filed in this cause be, and the same hereby is, referred to the auditor of the court, and that the auditor, in connection with the reference heretofore made to him, settle and state the account of the receivers.

By the court—

MACARTHUR, *Justice.*

We consent to the above order.

NATH'L WILSON, *for Pl'ff.*
WM. F. MATTINGLY, *for Def't.*

Report of Auditor on Receivers' Account. Filed Jan. 16, 1880.

In the Supreme Court of the District of Columbia.

CHARLES C. HUNTLEY
vs.
SILAS S. HUNTLEY. } No. 6075. Eq. Doc. 19.

This cause was referred to me "to state the account of the receivers," which I have proceeded to do in "Schedule A" of this report, in which I have charged them with the full amount collected from the General Post Office Department, as shown by the report filed in this cause, crediting them with disbursements under the order and decree of court for the payment of certain sub-contractors for their service in the transportation of the mails, for which transportation the contracts involved in this cause were originally made.

The balance shown to be in the hands of the receivers by this account is thirteen thousand and ninety-seven dollars and sixty cents.

JAS. G. PAYNE, *Auditor.*

January 15, 1880.

257 SCHEDULE A.

Account of Nathaniel Wilson and Wm. F. Mattingly, Esq'rs., Receivers.

DR.

To amount of moneys collected from the General Post Office Department, as shown by report, &c.	$28,130 75

CR.

By amount of moneys paid out for sub-contractors, for transportation of mails by them	$13,611 61	
This disbursement was made by direction of the court.		
By commissions of receivers, 5 per cent.		1,406 54
By auditor's fee, this account		15 00
By balance in the hands of receivers		13,097 60
		$28,130 75

JAS. G. PAYNE, *Auditor.*

Report of Auditor.

In the Supreme Court of the District of Columbia.

CHARLES C. HUNTLEY
vs.
SILAS S. HUNTLEY. } No. 6075. Eq. Doc. 18.

This cause is referred to me to state an account between the parties.

After due notice I proceeded to execute the order, and submit herewith the proofs taken before me and the stipulation of parties.

The plaintiff and defendant were jointly interested in a large number of mail contracts, commencing with the 1st of July, 1874, and continuing for a period of four years.

The controversy here is over the settlement of the accounts connected with the business of these contracts.

258 Two exhibits are filed with the defendant's answer, marked S. S. H., Nos. 1 and 2, which, with Exhibit- A, B, and C to the defendant's answer, are the basis of the accounting.

By a stipulation entered into between the parties during the progress of the audit, it is agreed that the credit to the complainant in the account stated in Exhibit S. S. H., No. 2, so far as it relates to the contracts in which he had one-third interest, should be increased to a further credit of five hundred and seventy-six dollars and ninety-three cents, and as to the routes in which he had one-half interest a further credit should be given of eleven hundred and sixty-eight dollars and sixteen cents, increasing his credits in this account, altogether, seventeen hundred and forty-five dollars and nine cents.

With these corrections or additional credits it was stipulated and agreed that the items in these two accounts, S. S. H., Nos. 1 and 2, and in Exhibits A, B, and C, are correct with the exception of two items, viz., a claim made by the defendant of the sum of fifteen thousand dollars for expenditures upon joint account and an item of twenty thousand dollars claimed by S. S. Huntley on account of the loss of complainant's services and the extra labor performed by the defendant.

A further claim was made before me by the plaintiff on account of the deposit of seven thousand one hundred and eleven dollars and ten cents made by him in a Utah bank prior to the commencement of this joint business, and which, with the exception of $1,666.60, had been lost through the failure of the said bank.

The plaintiff further claims that the defendant is indebted to him for the proceeds of a horse belonging to the plaintiff, and which was sold by the defendant, for which the plaintiff claims the sum of one hundred and fifty dollars.

Prior to the first of July, 1874, these parties, either in the name of C. C. Huntley or S. S. Huntley, or in their joint names, presented to the Post Office Department of the United States bids for the transportation of the mails on a large number of post-office routes.

In the making of these bids or proposals it was necessary under the law that the bid should be accompanied by a certified check from some national bank as security that the bidding party,

259 if his proposal were accepted, would execute a contract with the Government upon the basis of his proposal for the transportation of the mails.

The plaintiff had deposited in the First National Bank of Utah the sum of $7,111.10, together with a number of promissory notes made by himself or others, upon which the said bank issued to them certified checks which were used in connection with their bids for these post-office contracts.

One of these notes was made payable to the order of the defendant and indorsed by him. The money was deposited in the name of C. C. Huntley, although both parties were present at the time the arrangement and deposit were made with the bank. Either by a direct acceptance by the Post Office Department of their proposals,

or by the purchase of routes from other successful bidders, or by securing subsequently routes upon which the successful bidders had failed in the making or the execution of the contracts, the parties in this cause became the contractors for a very large number of routes.

Soon after the 1st of July, 1874, during the late portion of the summer or the fall, the complainant was attacked by a severe illness, which has ever since incapacitated him from any active participation in the work or execution of these contracts or management of the business, all of which has therefore devolved entirely upon the defendant.

In the depositions taken before me and returned herewith, the defendant describes in detail the manifold duties and responsibilities which fell to his performance in the procurement of contracts, the sub-letting of most of the routes, the general management of the business, and negotiations with the Post Office Department in regard to the contracts and the payments.

In the accounts rendered by him he claims twenty thousand dollars as a compensation for the loss of services of the plaintiff during all this time, or as compensation to himself for the extra services rendered necessary upon his part, or upon both grounds.

It would seem upon first view of the matter that this claim was founded in very strong equitable consideration, the facts being as I have recited them; but the complainant, through his counsel, insists upon the application of the established principles of the law here, and upon such an application of these principles I am
260 compelled to exclude this item as not being a proper one to be allowed to the defendant or charged against the complainant.

The general rule of law applicable to partnerships is that each partner ordinarily contracts to render all of his diligence and skill, his services and labor, for the promotion of the common benefit of the concern. He must, therefore, do it without any reward or compensation other than that expressly stipulated for between the partners.

In the present instance there is no proof before me of any specific agreement of partnership; no written agreement was ever made.

It is said in the books that the law never undertakes to measure and settle between partners the relative value of their various and unequal services bestowed on the joint business; that each is held for the exercise of good faith, sound and reasonable discretion, and for the application of his skill, service, and labor, as before stated.

It is true that where one partner fraudulently or under circumstances amounting to very gross negligence wilfully refuses to render to the joint business his time and service, or his skill and labor, it may be a ground for dissolution of the partnership, or for excluding him from the profits of the enterprise to which he was bound to devote his service and time, and to which he refused to render such service; but that is not this case.

Here the claimant was by an act of Providence, or what amounted to such, incapacitated from performing the duty of a partner, and

so continued during the whole subsequent period of the partnership business.

There are very many cases in the books in which this question is discussed; cases arising from the death of one partner and the claim of the surviving partner for extra compensation upon the ground of extra services necessitated on his part and loss of the services of the other partner.

In all these cases the decisions of the courts have been uniform rejecting the claims so made, holding generally that one partner is not entitled to specific compensation for extra services in the business of the firm unless by special agreement.

This is laid down in Story on Partnership, 182; Collier on Partnership, 199; Coddington *v.* Idell, 29 N. J. Eq., 504; Boardman *v.* Close, 44 Iowa, 428, and Farrer *v.* Farrer, 29 Gratton, 134.

261 The question was recently discussed in a case decided in the Supreme Court of the United States, Denver *v.* Roane, 99 U. S., 355, which was a case of the settlement of the partnership account, and in which the claim was made by the surviving partners for extra services in carrying on the business after the death of the deceased partner.

The court in this case cited the doctrine laid down in Story on Partnership and in the authorities I have cited above.

In Collier on Partnership, section 199, it is held that a surviving partner is not entitled to commission or compensation for his services, and the same doctrine is held in 3 Kent's Commentaries, 11th ed., page 74; in Story on Partnership, sec. 331; and in numerous other cases which are found in the reports.

These authorities are all in one direction, and upon them I have to report against the claim made here by the defendant for extra compensation or for the loss of his partner's services.

The next item in issue here is the claim of the defendant for a credit of fifteen thousand dollars, contained in "Exhibit S. S. H., No. 1," to the defendant's answer designated as "expenses, &c., on joint account."

The deposition of the defendant discloses the nature and character of these expenses, which were, as he states, necessary, and incurred in the procurement of contracts from the Post Office Department, and in negotiating with other parties who had contracts, inducing them to forego or to transfer the same, and which expenses were in the nature of incidentals.

They are succinctly described by the defendant in his testimony as incurred in procuring and returning the friendly services of various parties, from a messenger in the Post Office Department to a Senator of the United States and a Governor of a Territory.

No itemized account of these expenditures is presented, and the defendant testifies that he kept no such account, that he drew sums of money from time to time which were charged to himself on the books of the business as personal money, and portions of which he claims to have expended in the manner and for the purpose described. No objection is made by the complainant to this claim by

reason of the character of these expenditures or their pur-
262 pose; but it is objected by the complainant that there is no sufficient proof here to warrant the allowance to the defendant of any portion of this claim.

It is asserted, as is the fact, that the defendant kept the books of the partnership, had the entire and exclusive management and control of the business, and of the receipts and disbursements of the moneys.

Upon the books of the business kept by the defendant there appears an account for expenditures similar in character to those for which this fifteen thousand dollars is claimed, and which account, so kept on the books, amounts to $24,512.55.

It is asked by the complainant, why an account of this nature being kept, the expenditures, which are said to make up the fifteen thousand dollars' claim, were not also a matter of record upon the books? To which it is replied, on behalf of the defendant, that the charges made in the account upon the books were either for large amounts or where the expenditures were represented by bills, or there was some other reason for making a distinct and separate charge and account; while the expenditures which are claimed in the fifteen thousand dollar item consisted, as before related, of moneys drawn in bulk in various sums by the defendant, expended by him in various purposes, without any favorable opportunity for keeping a record of the same.

It appears from all the proof in the case that the expenditures for which this credit is claimed, however much they may be opposed to public policy or good morals, are, if not necessary, certainly very common in the prosecution of such a business as these parties were engaged in during the period of this mail service, and no objection being made upon the ground of the character of the expenditures, I should certainly feel called upon to allow the same could I find the proof of the expenditures such as is required by ordinary rules of law.

The defendant, in response to a question asked by his own counsel, and again, upon cross-examination, states that he arrived at the amounts so expended by him and claimed "by calculating what he had received for the four years, and subtracting from that what he has left." He states "that from this computation he knows that he must have spent for this business thirty thousand dollars, and that
263 he ought to have put in twenty-five thousand dollars as the amount of this charge."

In another portion of his deposition he states that he gets at the amount "by subtracting from what he really received from these routes at the end of four years what he really had left, showing that he had spent in the business forty or fifty thousand dollars, and that he thinks fifteen thousand dollars very low to go down as the actual expenditures."

It seems to me this proof is not sufficient.

The defendant was in entire and exclusive charge of the business so far as the partnership was concerned. The plaintiff, his partner, was unable to give any personal attention to any matter connected

with the business, or to sanction or object to any expenditure and in this condition of things it was the duty of the defendant to have at least kept a careful and strict account of all the disbursements made by him, which were to be charged to the common business, or for which he intended to claim from that business reimbursement.

This he failed to do, and however meritorious as between these parties this claim of the defendant may be, and while I should be very much gratified if I were able to accord to him the reimbursement which he claims in whole or in part, I am forced to the conclusion that the proof is not sufficient in kind or extent to warrant me in so doing. I feel, therefore, compelled to exclude this item from the account.

I have applied here the rule of law governing the case of a partnership where one is in charge of the accounts and financial business of the concern. This rule is much stronger as held and applied by the courts in cases of circumstances similar to those existing here. In such cases the actual partner is held to the duty and accountability of a trustee.

It is then claimed on the behalf of the complainant that the loss of the money deposited by him in the First National Bank of Utah, as before stated, should be borne by the partnership on the joint business, for the reason that the money was deposited as a basis for the procurement of the certified checks which were necessary to secure the contracts which formed the partnership business.

It is true that the money so deposited, together with the notes
264 given to the bank at the same time, did form the basis of the certified checks which enabled the parties to make their bids; but there was no understanding or agreement that this money was to be a contribution by the complainant to the capital stock of the firm, or that it ever became by the manner of its deposit or subsequent treatment the property of the firm.

It was deposited by the plaintiff in his own name, and it is possible, if not probable, that but for his unfortunate illness subsequently he would have been able to secure the amount of that deposit after the necessity for its use had ceased, and before the failure of the bank. Therefore, while the money was of benefit to the parties jointly it continued to be the property of the complainant, both as to its ownership, its control, and its risks, &c. As the complainant in the other matters involved here invokes a strict application of the rules of law, it is but fair to apply it to this matter, and such an application must exclude the claim of the complainant that the defendant should participate in the loss.

The claim of the complainant for the proceeds of a horse belonging to him and sold by the defendant is a matter not seriously disputed between them, and is allowed in the account.

I have stated in "Schedule A," attached to this report, the account as I find it, in accordance with the conclusions above stated, based upon the Exhibits S. S. H., Nos. 1 and 2, to the answer of the defendant and the corrections named in the stipulations.

Upon the balance shown to be due from the defendant to the

complainant by this accounting the latter claims an allowance of interest from the time of the termination or expiration of the contracts; that is, the last of June, 1878. After a very careful examination of this question, in view of the ordinary rule that interest is never allowed upon the balances due one partner before dissolution, and in some cases not until after settlement between the parties, and in view of the fact that although the contracts in which these parties were jointly interested expired by their terms at the date mentioned, the joint business was still carried on for the purpose of closing up the accounts with the Post Office Department with the sub-contractors, and of disposing of the joint stock and
265 property, and in view of the fact that at or near the time of the filing of this bill the balance due from the Post Office Department upon these contracts was placed in the hand of receivers of this court, I have not thought it proper to recommend an allowance of interest upon the balance of the account.

As a matter of pure equity between the parties, I think I have in this account given to the complainant fully all to which he is entitled. I therefore report the balance due without interest.

This balance, in fact, includes the moneys now in the hands of the receivers.

This latter statement is made with the consent of the solicitors on both sides.

JAS. G. PAYNE, *Auditor.*

Jan. 16, 1880.

Auditor's fee, $75.00.

SCHEDULE A.

S. S. Huntley in account with Charles C. Huntley.

Dr.

To amount of balance due to C. C. Huntley, as shown in account of S. S. Huntley, contained in "Exhibit 2" to his answer	$19,917 51
Corrections and additions, as per stipulation of the parties to this cause	1,745 09
One-half of the sum of $15,000, claimed by S. S. Huntley, and charged by him on account contained in Exhibit 1 to his answer	7,500 00
Proceeds of one horse, the property of C. C. Huntley, sold by S. S. Huntley	150 00
Total indebtedness	$29,312 60

JAS. G. PAYNE, *Auditor.*

MONDAY, *August* 18, 1879—2 o'clock p. m.

Met pursuant to notice.

Present: Mr. Wilson, for the complainant, and the complainant in person.

Mr. Mattingly being out of town, the hearing was continued to Friday, Sept. 2, 1879, at 10 o'clock a. m.

266 TUESDAY, *Sept.* 2, 1879—10 o'clock a. m.

Met pursuant to adjournment.

Present: Mr. Wilson, for the complainant, and the complainant in person. No one appearing for defendant, the hearing was adjourned to this 3 o'clock p. m.

TUESDAY, *Sept.* 2, 1879—3 o'clock p. m.

Met pursuant to adjournment.

Present: Mr. Wilson, for the complainant, and Mr. Mattingly, for the defendant.

Adjourned subject to notice.

FRIDAY, *Nov.* 28, 1879—2 o'clock p. m.

Met pursuant to notice.

Present: Mr. Wilson, for the complainant, and Mr. Mattingly, for the defendant.

Mr. Wilson presented a number of post office accounts for the purpose of showing the errors in the account filed by the defendant, and marked Exhibit S. S. H., No. 1. He also gave notice to the other side to produce proof and vouchers as to the charge of $15,000, together with the items of charge for personal account.

The papers submitted were taken by Mr. Mattingly for inspection, and the hearing was then adjourned subject to notice.

FRIDAY, *January* 2, 1880—2 o'clock p. m.

Met pursuant to notice.

Present: Mr. Wilson, for the complainant, and Mr. Mattingly, for the defendant.

Whereupon it is stipulated and agreed between the parties that the amount shown to the credit of C. C. Huntley in the account stated, and marked "Exhibit S. S. H., No. 2," in respect of his one-third interest in the Montana routes, should be increased by $576.93, and as in respect of his interest in one-half of the routes sublet should be increased by $1,168.16, making a total of $1,745.09, as an addition to the credit shown in that exhibit.

With these corrections it is further stipulated and agreed that the items in the accounts stated, and marked "S. S. H., No. 1" and "S. S. H., No. 2," and Montana accounts A, B, and C, are correct and accepted as such, with the exception of the sum of fifteen thou-
267 sand dollars charged as expenses on joint account in "Exhibit S. S. H., No. 1," and the sum of twenty thousand dollars, the amount claimed for loss of C. C. Huntley's services, and on account of extra labor performed by S. S. Huntley. The plaintiff also claims an additional credit on account of the deposit of the sum of $7,111.10 made by him in the First National Bank of Utah, and which has been lost, with the exception of a credit of $1,666.60.

SILAS S. HUNTLEY, defendant, being duly sworn, deposes as follows:

By Mr. MATTINGLY:

Q. In "Exhibit S. S. H., No. 1," you have credited yourself with

the sum of fifteen thousand dollars for expenses, &c., on joint account. State whether you have kept any itemized account of those expenses.

A. I have kept no real itemized account of the amount that would make that $15,000 that I could show.

Q. Please state as fully and in as full detail as you can the general nature and character of those expenses and the items comprising that amount, and whether they were necessary in the prosecution of your business.

A. In keeping my accounts I generally kept each account separate, and I gave credit each time I made a collection from the Post Office Department, and I credited the route with the warrant I received from the Post Office Department. Those warrants would show the entire credits belonging to the company and to all the routes. On the other hand, when I made a payment against any of these, most of these routes were sublet, and opposite every route would show a debit. If I sublet a route for $4,000 per annum, each quarter I would send a $1,000 draft from the bank to pay that one quarter to the sub-contractor, and on the book it will show just for the four years sixteen credits; that is, four times a year I received a warrant from the Post Office Department, and made a payment four times a year, which in the four years made sixteen, and that is all that will show opposite any of these routes.

Then, in the general account it is S. S. Huntley & Co. At times I had to pay large amounts of money, from $100 to $500, to two or three thousand dollars, to get certain things done, that will
268 appear on the book. All other items on here will appear as S. S. Huntley or for myself. That appears on the books as charged up to S. S. Huntley for myself.

Out of these large accounts comes all the incidentals which are included in this $15,000; and this $15,000 represents four years' business, and the four years' business represents my collections in the Department of about $500,000. And it is necessary, in getting these accounts through the Department, and it has been the custom, to be very friendly, not only with the heads of the Departments, but even with the clerks and messengers; and we always treated them very kindly, in presenting them with some trifle, or in presenting them with a cigar, opera ticket, or dinner, or something of that kind; and to get anything done in the Department it requires assistance of a great many members of Congress, whom we have to treat in the same manner, and to whom I occasionally send theatre tickets; and always when I ask favors I generally send carriages for them and ask them to do certain things in the Department.

Then, as far as the press in Washington is concerned, during the investigations, which are generally every year, to keep them friendly. So far as I am concerned I have always been very friendly towards them, in the same manner, and very often giving them dinners costing from $10 to $50 each.

Then, in transacting this business, I have spent part of my time in Washington and part of my time on the Pacific coast, through Wyoming, Montana, Idaho, Washington, California, and Oregon,

sometimes making t[illegible] *as much* as twenty-five hu[illegible]

In subletting these routes I [illegible] the expense of traveling to see these different parties and drawing up the contracts and the bonds, &c., and during the first year we succeeded in all the bids that we put in in getting but three or four of these routes. All the others were awarded to different parties. Sometimes from eight to ten different people would bid for one route, and then when the lowest man failed to secure these routes at proper figures we had to get the intermediate men out of the way, and I had to treat them in this same manner, and even paying them a few dollars.

269 Wherever I paid them over $100 it is down in the book, but no items of any less amount. I carried on correspondence at that time with agents we had out there, and during all these failures I had to telegraph as high as thirty or forty dollars a day, in sending and receiving telegrams. And then all of these routes, with very few exceptions, that we now have were held by straw, or so considered, and all of them during the entire contract term I had to be very friendly with, and sometimes they were threatening and always wanting a little more, and I would send a suit of clothes, or be friendly with them in that manner, and sometimes a dress to the wife, or watch, or something of that kind.

All of my items that are in the book I have a check and stub to show, except those I have mentioned. These were all included in amounts from one to five hundred dollars, which I would draw and put in my book, and out of this money I would pay all these small amounts.

For instance, I find our Governor from Montana would come on to Washington, and I find that he staid at the Arlington for about a week, and I treated him as nice as possible, and when he went away I paid his bill.

I find Governor Thayer, of Wyoming Territory, came on, and I treated him in the same way. I found it necessary to get a bid that a man owned in Chicago, properly belonging to us. After writing a number of times for it I wrote for a friend of mine there who knew both parties to come on East. He staid a few days, and all his expenses were paid by me, and in New York they were paid by me, and I then gave him one hundreddollars and he returned to Chicago, with the request that he would do the best he could towards securing this bid, and in a few days I received word from him that he could not succeed. I took a trip there and staid a day or two, and finally wound up by paying the man $2,000 in cash. The $2,000 expense incurred is down on the books, but nothing else, which must have amounted to three hundred or more.

Besides all of these small presents, paid to pretty near everybody in Washington, I guess, are included all of my hotel expenses, travelling and sleeping cars &c., and, altogether, I think it must have cost me out of money charged to me about $30,000. I can only arrive at about what it cost, because I know what I re-

270 ceived for the four years, and I know what I have left, and subtracting from that what I have left, I know I must have

the sum of fifteen thousand dollars

spent for this business $30,000, and I ought to have put in $25,000, and I only find $15,000 charged—that is, for everybody's good will, from the messenger in the Department to a United States Senator and Governor of a Territory.

Q. Are you satisfied that $15,000 is a very low estimate for expenses such as you named?

A. I am very positive that it is very low, and I think it ought to have been put in much larger. When Charley came home from Europe with his cousin and her husband I met them in Boston, and they were all broke, and paid their fare to New York and all their expenses in New York, and there are no such items charged against him.

There is another item of expense which occurs to my mind, which was three trips from here to New York, and lawyers' fees in New York, which was incurred under the advice of Mr. Barlow, who was connected with us in some mail contracts for the benefit of the complainant and the benefit of the firm of Huntley & Co.

Q. Were you associated with the complainant prior to 1874, when this copartnership was entered into in running mail routes?

A. I was associated with him for about two contract terms, being eight years.

Q. During that period did he receive expenses for purposes similar to those for which you testify in connection with this $15,000 charge?

A. He was always in the habit of incurring similar expenses—larger, if anything.

Q. Are expenditures of that kind necessary in the prosecution of the business in which you two are engaged?

A. We have always considered it necessary. There is hardly an item on that book, debtor, less than $100, except for amounts where bills were sent in that were for something tangible.

Q. Were you travelling frequently between here and the West, and through the West where your contracts extended?

A. I was travelling more than one-half of the time.

Q. This item is intended to embrace all the travelling expenses?

A. Yes, sir; all travelling expenses.

271 Q. From the experience that you have had in connection with the transportation of mails under contract with the Department for the amount of business you did for this firm, is $15,000 a reasonably low item for expenses and for the general purposes named by you?

A. I think it very low, and I do not think $25,000 would make me even.

Q. As to the item of $20,000 for the loss of the complainant's services, state whether under the agreement between you he was to render his personal services in the prosecution of the business, and whether, in point of fact, he did so or not.

A. It was expected and agreed that we should act together and work together as we always had done, and very nicely. When I would be West he would be in Washington, and I would telegraph to him or *vice versa*, and save a great deal of unnecessary expense in travelling back and forth. Of course neither of us foresaw anything

of this kind where his services were not only taken away from the company, but made more burdensome for me. I had individually to look out for his interests financially, and his health and everything else, and his welfare.

Q. This partnership began in routes that commenced in July, 1874?

A. Yes, sir; that took effect the 1st day of July, 1874, to June 30, 1878.

Q. During those four years did he render any assistance whatever in the prosecution of the business?

A. He never rendered any assistance whatever after the first month or two.

Q. He was prevented by sickness?

A. After some time in the summer or fall of 1874 he was prevented by sickness. He rendered assistance in putting in the bids and securing them up to his sickness.

Q. In the prosecution of this business, state generally the nature of the duties you had performed and the work you did.

A. The first thing was to make out our bids and then to engage our friends to bid for us, and then to find men West to put in bids. We were awarded in all our bids only four or five routes, and I think C. C. Huntley was awarded two routes, all that we started with in 1874. With those that we started with it was my business if
272 we had them once a week to get them put to three times a week, and if three times a week to get them put to six or seven times a week, and if they were twenty miles long to get the service increased. These routes were awarded to other men. I watched the opportunity in Washington when it would be the best time for a failure, and also the postmaster on the route, and at the proper time that I said they failed a part of my business then was to secure the good will and the acceptance, and the withdrawal and the power of attorney of each one of the bidders above the failing bidder, and then to watch in the Department to accept or decline this route as I saw fit on any one of these names. Then, having secured the route by representing it with power of attorney, it was my duty to get it worked up in the same way as our other routes, by increase of service or extension of route.

Sometimes, having a contract that was at a losing figure, I would get it curtailed or service discontinued. Each quarter I would receive from the Post Office Department, on all these various routes, collections. They would send them to the sub-contractor for collection, and he would retain the amount collected and I would deduct the amount from his quarterly pay, and each quarter, having collected the whole pay due from the Department, I would remit him the balance due for his quarter's work.

Then in some of these routes that we had stocked and run ourselves I had the general management of. I would, each quarter, foot up the receipts of the way-bills and show what the receipts of the road were, and also look over the vouchers for expenses, and as the expenses every quarter exceeded the receipts I would pay that

to the superintendent of the road from the money in my hands received for the mail pay.

Q. State whether, at the beginning, you operated at a loss or not.

A. In the first year we had nearly all these routes at a loss; our loss must have been from ten to fifteen thousand a year. One route alone we were running at a loss of about $6,000 a year, and every quarter I was obliged to borrow money, in addition to the mail pay received, to pay our sub-contractors and running expenses and deficiencies every quarter.

273 Our accounts, I think, would hardly balance at about the end of two years or more, and then from that time on we made good all our losses, and at the end of four years declared dividend. Had I been taken sick when C. C. Huntley was we would not have made in the four years $4,000.

Q. State whether you obtained new contracts through your own efforts.

A. All of these contracts, except the three or four that we started with, were obtained through my own efforts, and I could not have done it if I had not had considerable experience in the *modus operandi*. I venture to say that none of you lawyers could have succeeded in getting any one of those routes; no one not familiar with the parties who had bids, and with the postmaster and the working of the office, could have secured a single one of them. If I had been anything but friendly with all of them any one of them could have thrown me out. The postmaster, the bidder, or one clerk of the Department could have thrown me out of any one of those routes.

Q. State whether, in the prosecution of this work, you consider $20,000 a reasonable and proper amount to be allowed you for the loss of your partner's services and by reason of increased labor thrown upon you.

A. I would consider that $20,000 would be very reasonable, and the necessary additional labor which I performed could not have been secured from any one else for any price. Nobody would have known—nobody could have done it.

Cross-examination by Mr. WILSON:

Q. Which of the routes that are named in your accounts were sublet, and which were run by you?

A. They were all sublet, except one, No. 37105, in Wyoming, for the entire contract term, and one in Utah, No. 41132, for part of the contract term, and one route in California, No. 46151, for part of the contract term, and which we were running at a loss and sold it out, and all the Montana routes, with the exception of one, No. 36119.

Q. What had you to do, practically, with the management of the Montana routes, and did you exercise any supervision whatever over them? How did you get at the accounts?

274 A. I looked all over the way-bills and footed them up, and looked over all the vouchers for expenses, and deposited in Hirshfield's bank whenever called upon to do so, which was always checked out by Mr. Clark.

Q. Mr. Clark then had the management of the business?

A. Yes, sir; he was superintendent and owner of one-third interest.

Q. Can you make any exhibit or have you ever had in your possession any account showing the receipts and expenditures in respect of the Montana accounts?

A. I have had the books, way-bills, vouchers, and book account for the Montana accounts.

Q. Have you now in your possession any exhibit or account showing the amounts received by your agent or partnership in Montana in respect of the Montana account?

A. I have the Montana book account here, and in Montana they have all the others boxed up.

Q. You have nothing here?

A. No, sir; they sent me on the checks here, and that is where I get the amount to charge; they sent me on the statements from the book; I have quarterly statements from there every quarter, which I have here.

Exhibit No. 2 does not show the amount of profit on the Montana routes.

Q. Have you ever prepared any account showing the gross receipts and expenditures in respect of the Montana account?

A. I have made no statement except this book and the statements that are here; I have made no separate account.

Q. No account then has been rendered showing how credit was given or the collections that were made in respect of the Montana routes; A, B, and C are lists of checks that were paid by Hirshfield & Co.?

A. Yes, sir; paid by Hirshfield & Co. by P. P. Clark checks, S. S. Huntley checks, and C. C. Huntley checks; and I have all the checks to show; I can show what the receipts of the road were.

Q. Has any account ever been rendered by Clark showing what the receipts were?

A. Yes, sir.

Q. The credit in account Exhibit S. S. H.. No. 2, of one-third
275 interest in the Montana routes is obtained by ascertaining one-third of the gross receipts from the routes, is it not?

A. Yes, sir.

Q. One-third of the gross receipts from the route, except the collections?

A. One-third of the warrants; the gross receipts would be the fines, warrants, collections, and deductions.

Q. My inquiry is for an account which will show what disposition was made of the collections and of the proceeds of the sale of the stock of the Montana routes.

A. I have a book statement, with all the vouchers, here in Washington, and a quarterly statement of the business, made out by Clark. The quarterly statements are here, but the vouchers belonging to them are in Montana; I have examined every voucher.

Q. What I desire is any account kept either by Hirshfield & Co.

or by Clark, showing the sums that were received in respect of the collections, and the $3,500 that was paid in respect of the stock.

A. I have the statements here, but not with me; I will produce them.

Q. On your ledger you have kept an account with C. C. Huntley & Co., have you not?

A. Yes, sir.

Q. State the aggregate of the expenditures made in the conduct of the business charged to the firm in that account.

A. $24,512.55; it is debtor $131,000, and it is credited $107,000.

Q. What are the credits made up of?

A. Most of these figures are borrowed money; it is where I borrow $5,000, and I place it in the book, and in three months it is paid, and most of the $131,000 was made up in that way.

Q. What were the expenses of the business, as shown by that account?

A. About $24,000.

Q. Give the exact figures.

A. $24,512.55.

Q. State of what those expenses consist mainly, so far as that account shows.

276 A. The main part of it was for having service increased in the Post Office Department, and the balance for bills not belonging to any route in particular.

Q. The account includes, does it not, hotel bills?

A. No, sir; there may be some; it includes one hotel bill of $202.15, charged to C. C. and S. S. Huntley. To obviate the necessity of dividing it, I charged it to both of us.

Q. Was there not included in it a number of bills for clothes, liquors, &c.?

A. There is some for clothes and some for liquors.

Q. The sum of $15,000 in account marked "Exhibit S. S. H., No. 2," is additional, therefore, to the sum of $24,512 charged in your book to Huntley & Co. as part of the expenses of the business?

A. Yes, sir; it is.

Q. Is there anywhere in the book kept by you any charge of the said $15,000?

A. I do not know.

Q. If there is any such charge in any of the books kept by you, who does know it?

A. I think you would be liable to see it. I do not know of any such charge in the book, because that was made up at the finish of the business.

Q. When did you first make the said charge of $15,000?

A. When I made up the final statement.

Q. When was that?

A. At the end of the contract term.

Q. Did you make that charge in any book or in any paper before the suit in this case was brought and the bill filed?

A. No, I did not.

Q. How did you arrive at the sum of $15,000 as being a proper

charge for the expenses of conducting the business, in addition to the charge made in your ledger of $24,500?

A. I get at it by subtracting from what I really received from these routes at the end of four years and what I really had left, showing that I had spent in the business forty or fifty thousand dollars, and I think $15,000 would be very low to put down as the actual expenses.

Q. From the book already referred to, what were the expenditures made by you and charged to your account?

A. I drew out about $86,000.

277 Q. State approximately the sums of money that came into your hands belonging to C. C. Huntley after the contracts began.

A. $30,000.

Q. State approximately what moneys were paid by you independently of the moneys received from the contracts after the 30th of July, 1874.

A. The money I put in the concern was borrowed money, which I borrowed from time to time.

Q. As the plaintiff in this case does not object to the payments of any moneys which you can show have been actually paid by you, he asks you to specify as fully and as distinctly as you can the payments that were actually made by you, and included the sum of $15,000?

A. I think I gave a general statement. I can only enumsrate as I did before. I cannot specify the expenses in detail.

Q. You say that the account includes travelling expenses. Did you not, as a matter of fact, have passes over a great many of the routes over which you travelled?

A. No, sir.

Q. Did you have a pass to California?

A. No, sir.

Q. None of them?

A. Yes, sir; some.

Q. What proportion?

A. We generally exchanged passes. We got forty or fifty passes, and out of them there would be two or three only that we could use.

Q. Did any of the bills which you paid for C. C. Huntley include your own hotel bills, or the hotel bills of any of your family?

A. In two or three instances they did, to the amount of forty or fifty dollars. He was nearly dead in New York, and I went over to get physicians and nurses, and staid a day or two, and my hotel bill was included.

Q. During his absence, did he keep and maintain his horses and carriage, and did you have the use of them for your own use and for the business?

A. For a few months I did.

Q. During the time that these contracts covered, from July 1st, 1874, to 1st July, 1878, did you have any routes in your own name?

A. Yes, sir; a few.

278 Q. Did you operate them at a profit?

A. Some of them.

Q. On the whole?

A. On the whole I did.

Q. Can you give approximately the estimate of the total profits?

A. I do not know that I can—several thousand dollars. I did not keep it in book form.

Q. Can you not be a little more definite?

A. I do not think I can.

Q. Was it over five thousand or over ten thousand dollars?

A. These routes were divided with silent partners, and I did not keep any account of them, and I cannot tell how much the real profit was.

Q. Several thousand dollars is as near as you can come as to the profits?

A. Yes, sir.

Q. Were you, during that time, engaged in any other business excepting as a mail contractor?

A. I gave all my time to the contracts and the stage business. I had a flock of sheep in Montana during the contract term.

Q. The $15,000 charged for expenses and the $20,000 charged for your extra services about squares the account, doesn't it?

A. I do not know.

Q. Do you know anything of a deposit made by C. C. Huntley for the purpose of obtaining certified checks of the First National Bank of Utah?

A. Yes, sir.

Q. How did you arrive at the amont of $20,000 as a proper compensation to you for your extra services?

A. As any man would arrive at it doing extra duty, and charge him for it. If my services were asked I would charge for them.

Q. What was the total net profit derived by you, as being interested in these contracts for the contract term?

A. I should think about $40,000.

Q. Do you mean that as half, or the whole?

A. I mean my interest.

Q. And C. C. Huntley's interest would be the same?

A. I do not know what he netted.

279 Do you mean that $40,000 is half of the net profits of the business?

A. No, sir.

Q. What were the net profits of the business as shown by your books?

A. The books will show.

Q. As nearly as you can?

A. I can look over the book and see. I cannot answer without looking over it.

Adjourned to Monday, January 5, at 2 o'clock p. m.

MONDAY, *January* 5, 1879, 2 *o'clock p. m.*

Met pursuant to adjournment.

Present: Mr. Wilson for the complainant, and Mr. Mattingly for

the defendant. Whereupon was resumed the cross-examination of S. S. Huntley by Mr. Wilson.

Q. Have you examined your accounts, and can you now state in what accounts the collections and the amount received for stock, &c., were credited?

A. Those post office collections were not in the quarterly statement, but were in the bank. I have the quarterly statement here; they have nothing to do with the collections or the warrants from the Post Office Department; they went into the bank.

Q. How were they credited on the books of the bank?

A. Huntley & Co. on the books of the bank.

Q. Please produce the bank statement which shows the payment to the bank and the credits to S. S. Huntley or Huntley & Co. of the proceeds of the sale of stock and of the post office collections.

A. It is here and I produce it. The two credits of July 1 and July 10 show the cash proceeds of stock.

Q. That account being in the name of S. S. Huntley, how was it checked upon and drawn out?

A. P. P. Clark, as superintendent, or S. S. Huntly, or C. C. Huntley, or Hirshfield for Huntley, and bills that were sent into Mr. Hirshfield that he knew were correct, and would check out himself. There were one or two that Charley checked in that way, or at his request.

Q. None of the checks were signed by him?

280 A. I do not know as they were. When Charley's account and mine were together, for instance, on the Lincoln road, we were equally interested, and I sublet, and Mr. Hirshfield knew what the contract was; he always checked himself for the money, and I saw what he paid, less the post office collections, would be the correct amount during the sub-contract.

Q. Indicate on which of the routes enumerated in "Exhibit S. S. H., No. 1," you were the contractor with the Post Office Department.

A. Nos. 37104 and 42107 were S. S. Huntley, and Nos. 44135, 36199, 36127, and 41132 were C. C. Huntley's.

SILAS S. HUNTLEY, being called by Mr. WILSON as his witness, deposes as follows:

By Mr. WILSON:

Q. State what you know of the deposit of the sum of $7,111.10, made by you or by C. C. Huntley in the First National Bank of Utah, in the fall of 1873 or early part of 1874.

A. I know there was a deposit of several thousand dollars made in the bank at Salt Lake City for certified checks.

Q. Whose money was it deposited, and by whom was the deposit made?

A. It was C. C. Huntley's money. It must have been deposited by him. We were both there when the money was deposited. With this cash a number of promissory notes were deposited in the bank,

signed by C. C. Huntley, Hirshfield, and Barlow. One of them was payable to the order of S. S. Huntley, and indorsed by him. These notes were the basis on which the bank issued certified checks, which were used as a deposit with the bid, required by law for securing contracts with the Post Office Department.

Q. Can you state with reference to what routes these certified checks were used?

A. I do not remember on what routes those certified checks were used.

Q. The bank failed, did it not?

A. Yes, sir; it did.

It is admitted that in respect of that deposit that the plaintiff, C. C. Huntley, has received from the Comptroller of the Cur-
281 rency the proceeds of one dividend paid December 1, 1875, amounting to $1,066.60, and the proceeds of the second and last dividend to June 5, 1879, of $667.80.

Q. Was the sum so deposited by C. C. Huntley in any way charged or credited to him in the account of Huntley & Co.?

A. I never kept any account of that transaction.

Q. Those certified checks were used, were they not, for the purpose of obtaining the contracts, or some of them, which are now the subject of consideration and described in the exhibits?

A. They were.

Q. Why is not C. C. Huntley entitled to a credit of whatever sum, or half of whatever sum, may be the resulting loss from the deposit of $7,111.10?

A. He has recived credit for this in our verbal settlement, as I understood it, of eigh years' previous work performed by me, and these books only commence the 1st of July, 1874.

Q. You claim, then, that all the expenditures that were made prior to the date of the contracts of June 30, 1874, although made for the purpose of obtaining the identical contracts that are now under consideration, are properly chargeable to him?

A. Our agreement was that I was to have an equal interest, unincumbered, to start the 1st of July, 1874. There was nothing said about this when our bids were put in. Any one can put bids in who sees fit.

Q. If it had not been for some agreement in relation to your interest, this sum would have been a proper charge in the account of Huntley & Co., would it not?

A. We had an unsettled business for eight years, which was never figured up, either debtor or credit. If we had figured that up, and I had charged for eight years' time, he would have received credit for his loss in this bank for all of this money; but as I never received any credit for my eight years' time, and some interest in roads besides for the eigh years' time, and as everything was lumped to start July, 1874, and as this occurred previous, it does not occur on my books.

Q. What is the evidence of such agreement or understanding?

A. I have no written evidence of it.

282 Cross-examination by Mr. MATTINGLY:

Q. State whether this money could have been and would have been recovered if it had not been for his sickness.

A. Most likely it would. We were in San Francisco in a month or two or three months before the bank failed, intending to stop there as we came East, but Charley was very sick, very low, and extremely dangerous for him to stop a day, and I was in charge of him in bringing him East to New York, and we came by Salt Lake City without stopping to recover this money, and then before I could get back the bank failed. If there had been two of us attending business at that time I could have secured this money if I could have left Washington, but I had to be in Washington every day to secure these routes when there were failures, and I had either to lose the routes, or the money had to go.

Redirect, by Mr. WILSON:

Q. You sent the certified checks yourself, didn't you—to the president of the bank, didn't you.

A. Yes, sir.

Q. When did the bank fail?

A. I do not remember the date.

Q. About when?

A. It was in the fall of 1874. I think I sent the checks October 18th.

Q. Could not the money have been obtained by correspondence?

A. I did write several letters, and not hearing from him I then wrote registered letters so as to be sure that he received them, and I received his receipt that he had, and it was then I began to feel uneasy about the matter.

Q. Did you cause any demand to be made upon him directly by any person?

A. I do not remember that I did.

Q. When was the plaintiff taken ill.

A. I do not remember the month, but it was in September, or the last of August, I think, '74. It was before October 8th.

Q. Where was he when he was taken ill?

A. In San Francisco.

Q. Where were you?

A. In Wallalah.

283 Q. Up to that time had he been giving his time and attention to the business of the concern?

A. Yes, sir.

Q. And before that time the contracts had all been made that are described in the schedules?

A. All contracts had been made, but not to us. This book will show who they were awarded to.

Q. Have you any memoranda to show the actual dates on which you got those routes?

A. No, sir; I did not feel secure as to some of these contracts during the whole of these four years. I felt secure when I got any-

thing in Charley's name always, until he came home and took them away from me.

Q. I inquired of you the other day the total of the net profits on the business of all the routes, which you said you would finish up; have you done so?

A. I have not done so and cannot state what they are.

Q. Have you made any calculation or estimate as to your own individual net profits from the business?

A. I have only made an estimate.

Q. What is your estimate?

A. Forty or fifty thousand dollars.

Q. And I understood you to say that in addition to that you have made a profit of several thousand dollars out of your connection with other mail routes since June 30th, 1874?

Recross, by Mr. MATTINGLY:

Q. In your letter of October 8th, 1874, to the president of the bank of Salt Lake City, did you request him to deposit the balance, which was the seven thousand and odd dollars, with Beekman, banker, in New York city.

A. I did.

Q. (Handing witness a paper.) Is this a copy of your letter?

A. That is a copy made by myself. I wrote him several times and telegraphed him.

(The copy of the letter referred to is filed, and marked "Exhibit A, 2.")

Q. You never received any reply?

A. I do not remember having received any. I did, but it was too late to recover anything; that is, I had a correspondence with
284 him, and he wanted to give his individual note, or something of that kind, which I do not remember.

Q. Were the bids which were made for the contracts to go into force July 1st, 1874, made in the name of Huntley & Co., or either of your individual names, and, if not, state how they were made?

A. C. C. Huntley made out his own bid in the name of C. C. Huntley, and I made out my own bid in the name of S. S. Huntley.

Q. Of the bids made out in the name of either C. C. or S. S. Huntley, how many contracts were obtained?

A. I think when the bids were first opened I had two routes that belonged to us and C. C. Huntly had one. In a day or two after that a bid was called informal on a certain route, which gave another route to C. C. Huntley, which was Helena to Lincoln, and then he actually had two routes. Nearly a year later I secured two more routes in the name of C. C. Huntley; one was the Evanson route and the other the Scallaho route. I secured a few for myself, and the balance are in different parties' names.

Q. State generally how all these routes included in Exhibit M 1 were obtained, and through whose efforts.

A. I will give one route, No. 41132, as an illustration: There were seventy-six bids on this route, the highest $7,000, and awarded to

the lowest at $1,990. We carried this low man and took the mail pay at $1,990 per annum, and it cost us $3,000 per annum to run it. He at the end of a few months failed and the route was then offered to the next bidder for $2,000, and the next one at $2,000 and the next one at $2,199, and the next $2,236, next $2,333, and the next one, which was myself, S. S. Huntley, at $2,440, next $2,500, next $2,700, next one $2,800, next $2,900, next $2,940, next $2,940, next $3,000, next $3,285.

I interviewed all these different men and received from each his acceptance and his declination, also his power of attorney, and in some instances their names on blank paper, and had control of them myself in Washington, and at the proper time I declined every offer. It then had to be marked up still further towards the $7,000, or be readvertised. I took the chances of having it marked still further up, which I did. The first one was C. C. Huntley $3,500,
285 which accepted for him. I then sublet the route, then had it extended, and then had it increased and the mail pay raised to about $13,000 per annum, giving us a profit of about $6,000 per annum. C. C. Huntley was in Europe at that time.

Q. State whether that process was generally gone through with respect to all other routes.

A. That process was gone through in all the routes to a greater or less extent, except those that were first given to S. S. Huntley or to C. C. Huntley, with the exception of one route to L. H. Hirshfield and two routes to L. B. Church.

Q. State whether going through this process was attended with expense.

A. It was necessarily attended with heavy expense.

Q. State whether a portion of that expense is included in the item of expense for which you have made a charge of $15,000 on joint account.

A. Certainly it is.

Q. Did C. C. Huntley take any part in this labor?

A. Not after the first two or three months of the contract term; no material part of this work whatever was done by him. No failures occurred until after his sickness and we came on from the West.

Q. In the item heretofore referred to of $24,000 of expense, being balance of account of Huntley & Co., state what amount included in that sum does not relate to these contracts.

A. $4,825.

Q. What is the amount of small bills in this account under $100?

A. $1,166.

Q. And the bills over $100 amount to $16,728?

A. Yes, sir.

By Mr. WILSON:

Q. Did you sell a horse of C. C. Huntley's for $150?

A. I did.

Q. Did you give credit to him for the proceeds?

A. I did not, that I remember of.

Q. After C. C. Huntley was taken ill in San Francisco, hadn't you absolute and entire control of his money matters, of his bank account, and whatever money was coming to him?

A. I suppose I did, but all his account; but everything that
286 came from the Post Office Department. He had real estate here and in Chicago, but I never knew anything about that. He had other moneys coming to him which also passed through my hands—a few notes that were due him.

Q. Was not whatsoever money he had in bank and whatever money became payable to him on account of pre-existing indebtedness paid to you?

A. I collected the money due him so far as I knew and I paid the debts so far as I knew.

Q. In your letter to the president of the bank at Salt Lake, you request him to give "us" credit; to whom do you refer?

A. To C. C. Huntley and myself.

Q. If the money had been paid according to your request, it would have been put to your joint credit, would it not?

A. It would have been put to C. C. Huntley's credit.

Q. It would not have been put to the credit of Huntley & Co.?

A. No, sir; it would be C. C. Huntley's money.

S. S. HUNTLEY.

Testimony on both sides closed.

Adjourned to Tuesday, January 6th, at 11 o'clock a. m.

Order Ratifying Auditor's Report as to Receivers' Account, and Ordering Investment of Funds. Filed January 17th, 1880.

In the Supreme Court of the District of Columbia.

HUNTLEY *vs.* HUNTLEY. } In Equity. No. ——.

On considering the report of the auditor on the receivers' account, heretofore filed and referred to the auditor, it is ordered by the court in equity, sitting this 17th day of January, 1880, that said report be, and the same is hereby, confirmed; and it is further ordered by the court that the receivers invest the moneys shown by said report to be now in their hands, being the sum of $13,097.60, in the
287 bonds of the District of Columbia known as three-sixty-fives.

CHS. P. JAMES, *Justice, &c.*

We consent to the above.

NATH. WILSON, *Compl't's Sol'r.*
WM. F. MATTINGLY, *Df't's Sol'r.*

Defendant's Exceptions to Auditor's Report. Filed Jan. 28, 1880.

In the Supreme Court of the District of Columbia.

CHARLES C. HUNTLEY
vs.
S. S. HUNTLEY. } No. 6075. Equity.

The defendant excepts to the report of the auditor on the partnership account filed in this cause on the 17th day of January, A. D. 1880, for that the auditor in said report—

1st. Did not allow this defendant the credit of fifteen thousand dollars ($15,000) claimed by him for expenses on joint account; and

2d. Did not allow this defendant said sum of twenty thousand dollars for loss by reason of the failure of complainant to render his services and additional labor thrown upon this defendant thereby.

WM. F. MATTINGLY,
Sol'r for Def't.

Exceptions to Auditor's Report. Filed March 15, 1880.

In the Supreme Court of the District of Columbia.

CHARLES C. HUNTLEY
vs.
S. S. HUNTLEY. } No. 6075. Eq.

The plaintiff excepts to the report of the auditor on the partnership account filed in this cause on the 17th day of January, 1880, for that the auditor in said report—

1. Did not allow the plaintiff interest on the sums of money in the hands of the defendant on the 30th day of June, 1878, and on sums subsequently received by him.

288 2. And did not allow the plaintiff the sum of ——— deposited in the First National Bank of Washington, and lots by the failure of the bank.

NAT'L WILSON,
Sol'r for Pl'ff.

Report of Receivers. Filed July 13, 1880.

In the Supreme Court of the District of Columbia.

C. C. HUNTLEY
vs.
S. S. HUNTLEY. } No. 6075. Equity.

To the court:

The receivers respectfully report, that with the balance of cash in their hands, $13,097.60, they purchased $14,700 of 3.65 D. C. bonds, as required by order of the court; that freight and commission, said bonds having been purchased at 89 p. c., exhausted precisely the

amount in their hands. We understand that these bonds to-day are worth 99 p. c.

Respectfully submitted,

NATH'L WILSON.
WM. F. MATTINGLY.

$13,097.60 lot. $14,700 3.65 bonds.
$14,700 3.65, worth July 13, '99, $14,553.

Lot		$29,312 60
Deduct value of bonds	$14,553 00	
½ coms.	710 52	
		15,263 52
Decree for July 13, 1880		$14,049 08

Final Decree Ratifying Auditor's Report Filed July 13, 1880.

In the Supreme Court of the District of Columbia.

CHARLES C. HUNTLEY, Plaintiff,
vs.
SILAS S. HUNTLEY, Defendant. } In Equity. No. 6075.

This cause having been referred to the auditor by the order
289 of this court made on the 12th day of July, 1879, to state the accounts between the plaintiff and the defendant, as partners in certain mail contracts, which expired on the 30 day of June, 1878, on which last mentioned day the partnership between the plaintiff and the defendant as to said contracts expired, and the said auditor having made and filed his report, and the plaintiff and defendant having excepted thereto, now came further to be heard, and thereupon upon consideration thereof, and after argument by counsel, the court doth, this thirteenth day of July, A. D. 1880, order, adjudge, and decree that the exceptions taken by the plaintiff and those taken by the defendant to the said report be, and the same are hereby, overruled, and said auditor's report is hereby in all things ratified and confirmed.

And it further appearing to the court that of the sum, twenty-nine thousand three hundred and twelve dollars and sixty cents ($29,312.60), due from the defendant to the plaintiff, and stated to be due in said report, the sum of fourteen thousand five hundred and nineteen dollars and fourteen cents ($14,519.14), was paid to the receivers heretofore appointed by this court, and that of said last-mentioned sum, after deducting therefrom the receivers' commissions and the cost of auditing the receivers' report, there remained in the hands of said receivers the sum of thirteen thousand and ninety-seven dollars and sixty cents ($13,097.60), which said last-mentioned sum the said receivers were, by the order of this court entered on the 17th day of January, A. D. 1879, ordered to invest in the bonds of the District of Columbia, known as three-sixty-five bonds; and it further appearing that the receivers invested said moneys in said bonds, purchasing them with fourteen thousand

seven hundred dollars at their par value, and that the market value of said bonds, at the date of this decree is ninety-nine cents per centum, and the plaintiff electing to take said bonds at their said value instead of having them sold; it is further ordered, adjudged, and decreed that the said receivers deliver to the plaintiff, Charles C. Huntley, the bonds so purchased as aforesaid, upon his receipting for the present value thereof, that is to say, fourteen thousand five hundred and fifty-three dollars ($14,553), as being in payment of so much of said indebtedness found by the auditor to be due from the defendant to the plaintiff, and pay to the said plaintiff any
290 interest received by them in respect of said bonds, and that upon the transfer of said bonds and the payment of said moneys to the said plaintiff, the said receivers be discharged from their receivership.

It is further ordered, adjudged, and decreed that the plaintiff recover of the defendant, and there is hereby adjudged to be due from the defendant to the plaintiff, fourteen thousand and fifty-nine dollars and eight cents ($14,059.08), with interest thereon from the 17 of January, A. D. 1880, and that the plaintiff have execution therefor as at law.

It is further ordered, adjudged, and decreed that the defendant pay the costs of this suit, to be taxed by the court.

W. S. COX, *Justice.*

The def't having appealed from this decree, it is ordered that he file a bond in the penalty of $20,000, for which he is allowed sixty days.

W. S. COX, *J.*

Order to enter Appeal.

C. C. HUNTLEY
vs.
S. S. HUNTLEY. } 6075. Eq. Doc. 18.

The defendant appeals from the decree in this cause passed July 13, 1880, the court in general term.

7, 22, 80. MATTINGLY, *Sol'r for Def't.*

Order to Receivers to Deliver Bonds. Filed Sept. 13, 1880.

In the Supreme Court of the District of Columbia.

HUNTLEY
vs.
HUNTLEY. } In Equity. No. 6075.

It appearing to the court that by the decree passed therein on the 13th day of July, 1880, the receivers heretofore appointed in this case, Wm. F. Mattingly and Nath'l Wilson, were ordered to deliver to Charles C. Huntley the bonds purchased by said receivers,
291 as shown by their report, and all interest accrued thereon, and that the defendant appealed from said decree, and was allowed sixty days within which to file his appeal bond, and it fur-

ther appearing to the court that the said defendant has not filed any appeal bond or given any security as required by said decree and by the rules of this court, it was ordered by the court in equity, sitting this 13th day of September, A. D. 1880, that the said receivers, Wm. F. Mattingly and Nath'l Wilson, deliver to the plaintiff, Charles C. Huntley, or to his solicitor of record, Nath'l Wilson, all the bonds now in their possession as aforesaid, and all moneys received and held by them as interest on said bonds, and the receipt of the said Charles C. Huntley, or of his solicitor of record, for said bonds shall, on being filed in this cause, discharge the said receivers and each of them from all and every liability under the order appointing them receivers.

W. S. COX, *Justice.*

Supreme Court of the District of Columbia, in General Term, Dec. 9, 1880.

CHARLES C. HUNTLEY
vs. } 6075. Equity Docket 18.
SILAS S. HUNTLEY.

This cause coming on to be heard on the defendant's appeal from the decree passed herein by the court in special term in equity on the 13th day of July, A. D. 1880, and having been argued by counsel and duly considered, it is ordered, adjudged, and decreed by the court sitting in general term, this 9th day of December, A. D. 1880, that the said decree be, and the same hereby is, in all things affirmed.

Clerk's Certificate.

Clerk's Office, Supreme Court of the District of Columbia.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court, this 9th day of December, 1880.

[SEAL.]

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR., *Assistant Clerk.*

292 *Justice's Certificate.*

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal, this 9th day of December, 1880.

D. K. CARTTER, *Chief Justice.* [SEAL.]

Clerk's Certificate to Justice's Official Character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing cer-

tificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court, this 9th day of December, 1880.

[SEAL.] R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Assistant Clerk*.

In the Supreme Court of the District of Columbia.

SILAS S. HUNTLEY
vs.
CHARLES C. HUNTLEY *et al.* } No. 6558. In Equity.

This cause came on to be heard at the present term, was argued by counsel of the respective parties, and, being duly considered by the court, it is, this 10th day of May, A. D. 1881, ordered, adjudged, and decreed, that the said complainant, Silas S. Huntley, do recover from the defendant, Bradley Barlow, one-sixth of the money in his hands of the said Northwestern Stage Company, being the proceeds of collections of mail pay, and from the sale of property and effects of said company, with interest. That said defendant, Bradley Barlow, be, and he is hereby, enjoined from paying to the said defendant, Charles C. Huntley, his agents or assigns, any portion of
293 said complainant's one-sixth interest aforesaid. That this cause be, and the same hereby is, referred to the auditor of the court to ascertain and report the amount of complainant's one-sixth interest so due from said Barlow as aforesaid, and to that end shall state all the proper and necessary accounts.

In ascertaining said accounts the auditor shall credit said Barlow with one-half the balance of said notes of S. S. and C. C. Huntley, dated February 1st, 1876, aggregating twenty-seven thousand seven hundred and fifty-eight dollars and five cents ($27,758.05), on said notes being exhibited to the auditor, after deducting therefrom the said sum of twenty thousand dollars ($20,000) paid said Barlow in April, 1876, upon the sale of said California and Oregon Company.

That the bill of complaint as to the defendant, Adam E. Smith, be, and the same is hereby, dismissed, and that the defendant, Charles C. Huntley pay costs of this suit.

By the court:

A. WYLIE.

In the Supreme Court of the District of Columbia.

S. S. HUNTLEY, Plaintiff,
vs.
C. C. HUNTLEY *et al.* } In Equity. No. 6558.

Now come the defendants, Charles C. Huntley and Bradley Barlow, and appeal from the decree rendered herein by the court in special term, on the tenth day of May, 1881, to the court in general term.

NATH'L WILSON,
Solicitor for Defendants.

294 In the Supreme Court of the District of Columbia, the 24 day of May, 1881.

SILAS S. HUNTLEY, Plaintiff,
vs.
CHARLES C. HUNTLEY and BRADLEY BARLOW, Defendants. } No. 6558.

The defendants having appealed to the general term from the decree pronounced herein on the tenth of May, 1881, in the equity court, and Albigence H. Brown, surety for said appeal, for themselves, and each of them, their and each of their heirs, and personal representatives, appearing and submitting to the jurisdiction of the said general term, hereby undertake to abide by, perform, and pay its judgment, which they agree may be pronounced against all of them.

CHARLES C. HUNTLEY,
BRADLEY BARLOW,
Appellants.
ALBIGENCE H. BROWN,
Surety.

Approved.

W. S. COX, *Justice.*

295 *Proceedings before the Supreme Court of the District of Columbia, sitting in General Term.*

TUESDAY, *January* 3, 1882.

Session resumed pursuant to adjournment.
Present: Chief Justice Cartter and Justices Hagner and James.

SILAS S. HUNTLEY, Plaintiff,
vs.
BRADLEY BARLOW, CHARLES C. HUNTLEY, *et al.*, Defendants. } In Equity. No. 6558. Cal. 103.

This cause coming on to be heard on appeal from the decree rendered herein by the justice holding a special term of the supreme court of the District of Columbia, in equity, and having been argued by counsel, and duly considered, it is ordered, adjudged, and decreed by the supreme court of the District of Columbia, sitting in general term, this third day of January, 1882, that the said decree, rendered at said special term, in equity, be, and the same is hereby, reversed and set aside, and that the plaintiff's bill of complaint be, [and the same] is hereby, dismissed, with costs.

And from this decree the plaintiff, in open court, prays an appeal to the Supreme Court of the United States; which is allowed.

By order of the court:

D. K. CARTTER,
Chief Justice, &c.

296 In the Supreme Court of the District of Columbia, the 11th day of February, 1882.

SILAS S. HUNTLEY *vs.* BRADLEY BARLOW, CHARLES C. HUNTLEY, and ADAM E. SMITH.	No. 6558. In Equity. In Error.

Know all men by these presents, that we, Silas S. Huntley and Lewis H. Hershfield and Hayward M. Hutchinson, are bound unto the above-named Bradley Barlow and Charles C. Huntley in the sum of five hundred dollars, to be paid to the said Bradley Barlow and Charles C. Huntley, their executors or administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 21st day of February, 1882.

Whereas the above-named Silas S. Huntley has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named Silas S. Huntley shall prosecute his said appeal to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

SILAS S. HUNTLEY. [SEAL.]
LEWIS H. HERSHFIELD. [SEAL.]
HAYWARD M. HUTCHINSON. [SEAL.]

Sealed and delivered in presence of—
JOHN T. GRAYSON,
As to Huntley & Hershfield.
WM. F. MATTINGLY,
As to H. M. Hutchinson.

Approved. CHAS. P. JAMES, *Justice.*

297 AUTHENTICATION OF RECORD.

Clerk's Certificate.

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court, this 23rd day of February, 1882.

[SEAL.]

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR.,
Assistant Clerk.

Justice's Certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal, this 23 day of February, 1882.

D. K. CARTTER, *Chief Justice.* [SEAL.]

Clerk's Certificate to Justice's Official Character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court, this 23rd day of February, 1882.

[SEAL.]

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR.,
Assistant Clerk.

Endorsed on cover: Dist. of Columbia Supreme Court. No. 201. Silas S. Huntley, appellant, *vs.* Charles C. Huntley and Bradley Barlow. Filed 2nd May, 1882.

114 324

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

SILAS S. HUNTLEY

vs.

CHARLES C. HUNTLEY, BRADLEY BARLOW, AND ADAM E. SMITH.

No. 201.

Brief of Appellant.

ENOCH TOTTEN,
WILLIAM F. MATTINGLY,
Solicitors for S. S. Huntley, Appellant.

R. O. Polkinhorn & Son, Printers, Washington, D. C.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

SILAS S. HUNTLEY

vs.

CHARLES C. HUNTLEY, BRADLEY BARLOW, AND ADAM E. SMITH.

No. 201.

Brief of Appellant.

The plaintiff in his bill in this cause claims that he and the defendants were the owners of certain stock, property, and effects of the Northwest Stage Company, which was engaged in in the transporttion of U. S. mails over certain mail routes under contracts with the Post Office Department, which expired June 30, 1878.

That the interest of the several parties was, as set forth and agreed upon in paper Exhibit S. S. H., No. 1, as follows:

Bradley Barlow a one-half interest; C. C. Huntley and the plaintiff, one-third; and Adam E. Smith, one-sixth.

That Barlow purchased the interest of Smith, making him the owner of two-thirds.

That Barlow collected all the mail pay, amounting to a large sum of money, and after June 30, 1878, sold all the property and effects of the company for $75,000, for which he had rendered no account.

That C. C. Huntley was largely indebted to Barlow in private account, and plaintiff believed that Barlow was endeavoring to apply moneys, in which he, the plaintiff, was interested, to liquidate C. C. Huntley's indebtedness to him.

The Bill calls for an account and the payment to the plaintiff of his one-sixth interest.

"Exhibit S. S. H., No. 1," filed with the bill and proven in the cause, is as follows:

Exhibit S. S. H., No. 1. (Record, p. 4.)

Know all men by these presents: That whereas Bradley Barlow is the owner of one-half of the stock, property, and effects of what was known as the Northwest Stage Company, and S. S. and C. C. Huntley are the owners of one-third of said property, and Adam E. Smith is the owner of one-sixth of said property, and each of the said parties share respectively in the above proportions in all the mail routes lately operated by said company, and are to share in the future on all those routes in the above proportions in the ownership, profits, losses, and expenses appertaining thereto or incident to the obtaining said mail routes, and it is agreed between us that the said Barlow shall have full power and authority to collect the pay on said routes during the present contract term for the benefit of the said parties herein named in the proportions to each party hereinbefore stated, and that full powers of attorney in all cases shall be made and delivered to the said Barlow to collect all mail pay on all routes now owned or hereinafter acquired by the aforesaid parties, or either of them, in the territory embraced by the service of the late Northwest Stage Company.

In witness whereof we have hereunto set our hands and seals this 22d day of December, A. D. 1874.

BRADLEY BARLOW. [SEAL.]
C. C. HUNTLEY. [SEAL.]
S. S. HUNTLEY. [SEAL.]
ADAM E. SMITH. [SEAL.]

In the presence of—
J. L. SANDERSON.

C. C. Huntley, in his answer, while he denies that the plaintiff ever had any interest in the N. W. Stage Co., states that on June 27, 1874, he purchased of James W. Parker a one-third interest in the N. W. Stage Co., and a one-fourth interest in O. & C. Stage Co. for $75,000, and a few days after he sold to Barlow for $30,000 one of the two-sixths in the N. W. Stage Co., so purchased from Parker. That at this time he determined to let the plaintiff have the other one-sixth in the N. W. and the one-fourth interest in the O. & C. Stage Co. But he avers that his purpose and intentions were that the plaintiff should have all the profits derived from said interests, and that the cost price should be first refunded him. He denies that "Exhibit S. S. H., No. 1," is or was intended to be a contract or agreement conveying or securing to the plaintiff an equal interest with him in an undivided third part or share in the Northwest Stage Company, its property, &c.; and says (7) that he has no recollection of signing Exhibit S. S. H., No. 1. He admits his indebtedness to Barlow, and that Barlow had collected all the mail pay and sold the property of the company. He objects to the appointment of a receiver, and says that it is to the interest of all parties that the moneys due from Barlow remain in his hands, he paying interest thereon.

Barlow, in his answer, admits the purchase by him of Smith's interest. He neither admits nor denies the plaintiff's averments as to his ownership of an interest in the N. W. Co., but leaves him to make such proof thereof as he may be able. He admits the execution of Exhibit S. S. H., No. 1, by each of the parties whose signatures are attached; and that three or four copies were made under his directions which were all executed.

He states that he purchased from C. C. Huntley, a few days after June 27, 1874, one of the two-sixths in the N.

W. obtained from Parker for $30,000, and that at that time C. C. Huntley informed him that he was going to let the plaintiff have the other one-sixth interest. He admits that he collected all the mail pay and had sold the effects of the company.

He appends to his answer a statement of account, which he states has been submitted to both S. S. and C. C. Huntley, and the correctness of it admitted by them. He admits the indebtedness of C. C. Huntley to him, but denies that he is endeavoring to apply any moneys in which the plaintiff is interested to liquidate it.

The Court at Special Term decreed that the plaintiff recover of Barlow one-sixth of the money in his hands of the N. W. Stage Co., and referred the cause to the auditor to state the account, &c.

On appeal by defendants to the Court in General Term, this decree was reversed and complainant's bill dismissed.

From this decree of the Court in General Term Silas S. Huntley, complainant below, appealed to this Court.

Assignment of Errors.

The court below erred in reversing the decree passed at special term, and dismissing said bill of complaint; in not decreeing that complainant was equally interested with said C. C. Huntley in the one third interest in the Northwest Stage Company; and that he was entitled to recover from said Barlow one-sixth of the money of said company in his hands; and in not affirming the decree passed by the court at special term.

Was the appellant, Silas S. Huntley, the owner of a one-sixth interest in the North West Stage Company?

That is the sole question in this case.

Brief of Argument.

All the circumstances surrounding the parties, and from the time of the purchase from Parker, the conduct and declarations of all the parties, both orally and in writing, show that S. S. Huntley was such absolute owner, and are inconsistent with any other hypothesis.

The testimony shows that C. C. and S. S. Huntley were cousins,—the latter being the elder of the two by two years.

That the business relations existing betwen them from 1867 to 1877, were of the most intimate, friendly and confidential nature.

That S. S. Huntley, in 1867, on the invitation of C. C. Huntley, resigned the position he held in New York and went to Montana Territory to engage with him in the business of mail contracts and stage routes. (Record, 23–143–4.)

That there was no agreement between them as to the compensation of S. S. Huntley, and that S. S., from 1867 until the end of the mail contract term, June 30th, 1874, rendered for C. C. Huntley diligent, laborious and valuable services. That during this period he lived in the extreme West, enduring hardships and dangers in establishing, running and extending mail routes, drawing no salary or pay and exclusive of board and lodging, expending but a few hundred dollars. That C. C. Huntley's profits during this period amounted to some $800,000 to $900,000; and that in the latter part of 1873 and the early part of 1874, the amount due S. S. Huntley for these services, while not

determined, was not a matter of dispute between them, but their value was fully recognized and appreciated by C. C. Huntley. (Record, 24, 35, 41–2, 46, 132, 133.)

That C. C. Huntley, during the contract term from July 1, 1870, to June 30th, 1874, was interested with Bradley, Barlow, Smith and Parker in two other companies known as the Oregon and California and the Northwestern Stage Companies, engaged in the transportation of the mails over certain routes.

C. C. Huntley's interest in the O. & C. was one-fourth, and in the N. W. one-sixth.

Parker's interest in the O. & C. was one-fourth, and in the N. W. two-sixths.

That in the latter part of 1873 and early in 1874, when it became necessary to prepare bids for the next mail contract term, from July 1, 1874, to June 30, 1878. C. C. and S. S. agreed to put in bids for the routes run by the O. & C. and the N. W. and other routes, in which they were to be equally interested (R., 22, 133), the object being to secure the contracts for the routes then run by the O. & C. and N. W., so that C. C. could buy out Parker's interests at a lower rate, and that S. S. and himself might be equally interested in all their mail contract business.

For the routes secured for the contract term from 1874 to 1878, other than those run by the O. & C. and the N. W., it is conceded that C. C. and S. S. Huntley were equal partners. This is shown by the record in cause No 6,075, which was a bill filed in January, 1878, for settlement of partnership account. The proceedings in that cause as well as this also, show that during these four years C. C. Huntley paid no attention whatever to the business, and that S. S. Huntley managed the same exclusively, securing

every contract that was had, and earning for C. C. the sum of about $40,000. The dispute in that case was over the claim of S. S. for extra services, which were disallowed as not authorized by law, and for certain expenses paid by him on firm account, which were also disallowed because he had made no charge for the same in the firm books.

Understanding that he was to have an equal interest with C. C. in the O. & C. and N. W., and that C. C. was to buy out Parker, so that this might be done, S. S. Huntley procured the parties who bid for the routes then run by these two companies, and obtained the contracts for all of them. (R., pp. 26, 29, 48.) And in June, 1874, he left here for the west, in order that the routes might all be started the first of July, 1874. While out there, he received a dispatch from C. C., informing him that he had purchased Parker's interest, his understanding of the dispatch being that the purchase was made for him. (48.)

C. C. Huntley made the purchase from Parker, June 27, 1874, for $75,000, one-half Parker's interest in the N. W., however, being for the benefit of Barlow, who paid $30,000 therefore. (R., p. 57.)

No settlement had been had between C. C. and S. S. Huntley for the latter's services for the seven years ending June 30, 1874. Besides this, monies belonging to S. S., amounting to about $21,000, had been used for the benefit of C. C. (R., pp. 24–47.) After the purchase from Parker in July, 1874, C. C. started west, and S. S. started east; they met at Salt Lake, and traveled together to San Francisco. On this trip it was agreed between them that S. S. should have a one-fourth interest in the O. & C., and a one-sixth interest in the N. W., from July 1, 1874, the consideration for which should be the cancellation of C. C's. indebtedness to him for previous services. (R., pp. 22, 23, 25, 48.)

S. S. accordingly never made any claim upon C. C. for compensation, and started July 1, 1874, without either money or property.

He took the management of the Co., reduced expenses, got losing routes discontinued, others increased, and applied himself diligently to promoting the business of the concern. (R., pp. 49–50.)

C. C. Huntley in his answer admits that his intention in making the purchase was that S. S. should have it, but sets up a mental reservation that he intended he should pay $45,000 for it.

Barlow, who appears in this case by the same counsel as C. C. Huntley, to whom C. C. is largely indebted; and who must have known all about the interests of the several parties, says, in his answer (p. 14), at the time I made said last mentioned purchase (referring to the one-sixth in the N. W.), Charles C. Huntley informed me that he was going to let the plaintiff have the other one-sixth interest, which he had just purchased of the said Parker, but he did not then, or at any other time, inform me upon what consideration or terms it was to belong to the plaintiff. And in his deposition, he further states that in the discussion between himself and C. C. Huntley as to the desirability of the purchase from Parker, C. C. Huntley said: "I am going to let Si have an amount of interest in it equal to my own." "I guess I told Si what Charley had said to me about it, and we acted upon the theory that he was to be an equal owner with Charley in that service." (Barlow's dep., 58–59.)

He again, when called as a witness for C. C., re-asserts his declaration as to the interest of S. S. and says, "and I never heard Charley say anything to the contrary, in our settlements or otherwise." (p. 127.)

Church, another of C. C's. witnesses, who was evidently predisposed to do him all the good he could, says that Charley told him he was going to let Si have an interest in the N. W. Stage Co. (p. 78.)

Hirshfield also says that when the parties were together in New York in the early part of 1874, making out bids, C. C. said he would purchase out Parker's interest in the N. W. for Si. (p. 133.)

The written acts of the parties show that S. S. Huntley was the owner of this interest.

Exhibit S. S. H. No. 1, (p. 40,) is the solemn act of all four of the parties executed December 22, 1874 under seal.

It defines the specific interest of the several parties. S. S. and C. C. Huntley, then equal co-partners, confessedly engaged in the same business under other contracts with the Post Office Department, are declared in this paper to be the owners of one-third of the stock, property and effects of what was known as the Northwest Stage Company. It first defines the distinct interest of each of the parties; then virtually declares it a partnership in accordance with the several interests as so defined; makes Barlow the cashier of the concern, and then declares that full powers of attorney shall in all cases be made and delivered to Barlow, to collect all money, pay, &c.

The pretence set up in the answer that the object of this paper was simply to give Barlow power to collect all mail pay is an absurdity on the face of the paper. It is apparent that other and distinct powers of attorney were needed to be filed in the Post Office Department, and the proof shows that they were executed and filed. (146.)

The depositions of both S. S. Huntley and Barlow show that the express object for which the paper was prepared and

executed was to define the several interests of the members of the firm. (See depo. of S. S. H., p. 161, and of Barlow, p. 127.)

The original was drawn by Barlow on the eve of C. C. Huntley's departure for Europe; he had four copies made by his clerk, and a copy was given to each of the parties who signed it. (Barlow, 127.)

EXHIBIT S. S. H. No. 2 (p. 62.)

S. S. Huntley, after consultation with Mr. Wilson and Barlow, sold to Sanderson the interest of S. S. Huntley and C. C. Huntley, in the partnership of Barlow, Sanderson & Company, doing business as the California and Oregon Stage Company; and this paper, in the handwriting of Mr. Wilson, is an agreement by Sanderson to absolve and discharge S. S. Huntley *and* C. C. Huntley from all obligations and indebtedness, &c., of the company. This was April 1, 1876.

EXHIBIT S. S. H. No. 3 (p. 62.)

February 1, 1876, C. C. Huntley, S. S. Huntley, and Bradley Barlow, met at Wilson's office to have a settlement of accounts of the C. & O. and N. W. Stage Companies, for the first quarter's business, ending Sept. 30, 1875. It turns out that the C. & O. had been operated at a loss, and Barlow brings C. C. *and* S. S. Huntley in his debt for $27,758.05, for which he takes *their joint notes*, signed by S. S. Huntley, and receipts for the same to *C. C. and S. S. Huntley*. This receipt is *Exhibit S. S. H. No. 3*, and is also in Mr. Wilson's handwriting.

Why S. S. Huntley was present at that meeting, and why he should make himself individually liable for over $27,000 for losses of the concern, if he had no interest as a partner, does not appear.

EXHIBIT S. S. H. No. 4 (p. 63.)

The result of this settlement seems to have been the sale to Sanderson of the interest of S. S. and C. C. Huntley in the C. & O. Stage Company for $20,000.

This money was paid to S. S. Huntley, and, on the same day that Sanderson executed Exhibit S. S. H. No. 2, April 1, 1876, he, S. S. Huntley, paid the $20,000 to Barlow, to be credited on the notes for $27,000, and took Barlow's receipt for the amount, which, on its face, states: "Received of *S. S. & C. C. Huntley*, $20,000," &c. This receipt is also in Mr. Wilson's handwriting, and is *Exhibit S. S. H. No. 4.*

EXHIBIT S. S. H., No. 5 (p. 63.)

June 1, 1878, Barlow wrote to S. S. Huntley, enclosing copies of telegrams relative to sales of N. W. Company property, in which he says: "*Please advise me what to do with yours and C. C. Huntley's interest?* I want to close mine out." In the P. S. he says: "I sent copies to C. C. Huntley." This letter is *Exhibit S. S. H. No. 5.*

EXHIBIT S. S. H., No. 7 (p. 64.)

Mr. Barlow, it seems, subsequently forgot that he had receipted for this $20,000 to be credited on notes of S. S. and C. C. Huntley, and claims to have credited it on the

individual indebtedness of C. C. to him. In March, 1878, when written to by S. S. for money, he gives us an excuse for not sending it, that he and C. C. were indebted to him at one time for about $90,000, which was not yet repaid. He refers to "yours, S. S. and C. C. Huntley's" interests, and wants S. S. Huntley's advice about the sale of the stock and property of the N. W. Company. This paper is Barlow's letter to S. S. Huntley of March 31, 1878, and is Exhibit S. S. H. No. 7.

For the first fifteen months after July 1, 1874, S. S. Huntley was allowed a salary of $500 per quarter as general manager of the N. W. Stage Company. Barlow (p. 58) says that from July 1, 1874, up to the close of the contract term, S. S. Huntley took an active part in the management of the affairs of the N. W. Stage Co.

In the settlement of Feb'y 1, 1876, this salary of S. S. Huntley of $500 per quarter was placed by Barlow to the credit of C. C. and S. S. Huntley (pp. 45, 60), so that if the defendants claim is correct, S. S. Huntley was doing all this work for nothing, and rendering himself personally liable for large sums of money in addition.

The Defence.

C. C. Huntley's Condition.

Some attempt has been made in the testimony to show that C. C. Huntley, from the summer of 1874 was mentally incompetent and unable to transact business. No such de-

fence is relied upon in his answer. C. C. Huntley himself, neither in his answer nor his testimony, claims that he was at all mentally incapitated in December, 1874, or at any time. Barlow's testimony shows that he transacted business with him during the entire period, involving large sums of money. While his physical condition was not good, yet, from the evidence of the transactions between himself and Barlow, his answer and testimony in this cause, it is apparent that his mind was not impaired; that he understood and appreciated what he did, and that no fraud was perpetrated or attempted. His true condition is well described by S. S. Huntley in his deposition, pages 52–3, question 243 and answer. The burden of proof was upon the defendant to prove his utter incapacity in December, 1874, and subsequently. The best proof would have been the testimony of the physicians, named in the depositions, who attended. This proof he did not see proper to take.

Testimony of Nathaniel Wilson.

Mr. Wilson, who, as is shown by the record, up to the time of giving his testimony, had acted in the cause as the solicitor of both C. C. Huntley and Barlow, evidently thought that the exigency of the case required such testimony as it was in his power to give. He thereupon retired from the case as solicitor and gave his testimony. A careful perusal of his deposition (p. 107 *et seq.*) is desired and requested by counsel for appellant, as it is evident that its only materiality consists in what the witness did not know, the inference to be deduced being that because he did not know of certain facts, therefore they had never existed. His cross-ex-

amination manifests that he had neither knowledge nor information of many material facts conclusively proven and conceded in the cause. He knew nothing of the execution of Exhibit S. S. H., No. 1, He had never heard of the purchase from Parker being in any way intended for the benefit of S. S. H.

He never knew anything of the bidding in the winter of 1873–4, to control the routes for the ensuing term then held by the Northwest Stage Company, nor of the action just taken by S. S. Huntley in that effort. Nor had he any knowledge that C. C. and S. S. Huntley were equal partners in a large number of other mail routes let at the same time for the contract term from July 1st, 1874, to June 30th, 1878. These are a few instances of many; and they simply show what is manifest throughout the case that both C. C. and S. S. Huntley were very reticent about their business affairs even to their own attorney.

Equity Cause No. 6,075.

Some capital is undertaken to be made out of the fact that this suit was instituted after the bill of *C. C. Huntley* vs. *S. S. Huntley* was filed (Equity cause No. 6,075), and the insinuation is made that this suit would not have been brought if that one had not.

The record discloses the simple facts. The bill in No. 6,075 Equity, was filed by C. C. Huntley in January, 1878, about five months prior to the end of the contract term of the mail routes to which that bill related. The contract term of the N. W. Company's routes expired at the same time, June 30, 1878. Barlow is putting S. S. Huntley off by claiming that the debt of C. C. & S. S. to him had not been paid, and that there was no money therefore in hand

for him. The last quarter's contract expires June 30, 1878, and Barlow cannot collect the pay for it until September or October, 1878. He is also advising with C. C. & S. S. relative to selling the property of the N. W. Company. After the sale, and after he has made out statements of account which he is submitting to both parties, thus inducing S. S. Huntley to believe that upon the adjustment of the account he will be settled with, and finally, acting under this belief, S. S. Huntley accepted Barlow's statement of account, including, as it does, large charges in favor of Mr. Barlow. He then discovers for the first time that his right to participate in this fund is denied, and he therefore brought this suit December 14, 1878.

Statute of Frauds.

It is claimed by counsel for appellees that the plaintiff's claim that a one-sixth interest in the N. W. Stage Co. was sold to him, was a verbal contract, void under the provisions of the statute of frauds, and cases from Mass. and Conn. are relied on, holding that contracts for the sale of stocks come within the statute. Browne on the Statute of Fraud, Sec. 296 to 298, Ed. of 1880, refers to these cases.

He states that "it has been directly determined in England, and so far as that country is concerned, must be taken to be settled, that the statute is not applicable to such contracts." The English decisions proceed upon the ground that shares are mere choses in action, and are not, in their nature, capable of delivery and acceptance. This author evidently approves such a construction of the statute as would limit its meaning to such personal property as is usually transferred by sale and delivery.

He cites 118 Mass., 285, *Somerby* vs. *Buntin*, to show that in that State a disposition has been manifested against further extending the rule. In the case cited, the court decided that a contract for the sale of an interest in an invention before patent, was not a contract for the sale of goods, wares, and merchandise, and held that it "would be unreasonable to extend the meaning and effect of the words which have already been carried quite far enough."

But even if the statute should be held to include contracts for shares in corporations and joint stock companies, it could only be that such shares were such evidences of value as were capable of delivery and acceptance. It is apparent that this reasoning could not be applicable to an interest in a private copartnership, as to which there could be no property, or evidence of such, capable of delivery and acceptance.

In 60th Me., 430, *Pray* vs. *Mitchell*, relied upon by the appellees, the report of the case shows that the opinion of the Court was against the plaintiff on other grounds independent of the statute of frauds, and that the decision upon that question was unnecessary. The Court decided that Pray was not a member of the firm of N. O. Mitchell & Co., there being written articles of co-partnership, and his name not appearing in them; that the entire capital was apportioned among the members of the firm who signed the partnership agreement, and that there was no interest remaining which it was possible for any third party to own or possess; and that assumpsit was not the proper remedy for one whose right to share in the profits of a partnership was denied. The Court then considers the question whether the action can be sustained upon the ground that plaintiff made a contract with Mitchell alone for a share of his in-

dividual interest in the capital stock of the company, and the opinion states: "we think it cannot for two reasons." The first is, that the evidence will not support such a conclusion; the other is, that a contract for the sale of an interest in, or shares in a joint stock company, is within the statute of frauds.

There is nothing in the case to show that Pray was ever recognized by Mitchell, or other parties in interest, as having any interest whatever in the concern.

But, it is submitted that, even if the statute of frauds could be construed to embrace a contract for an interest in a co-partnership, by no possibility could it be held applicable to the facts of this case.

It is evident that for the term beginning July 1, 1874, Parker retired from the firm and with the change of interests a new co-partnership was organized, into which S. S Huntley was admitted, he and C. C. having a one-third interest in the N. W. Stage Co. The sale by Parker of his interest in the old firm operated in law a dissolution of that firm. It has never been held in any case that a written agreement is essential to the creation of a co-partnership.

The contract in this case is an executed one. This firm composed of Bradley Barlow, C. C. and S. S. Huntley and Adam E. Smith, commenced business July 1, 1874, as copartners, under the name of the N. W. Stage Company, and with the single change of the purchase of Smith's interest by Barlow, recognized and assented to by his associates, so continued until the end of the contract term, June 30, 1878.

Mr. Barlow himself took no written transfer from C. C. Huntley of the one-sixth interest he purchased. (Rec., p. 57.) Exhibit S. S. H., No. 1, is in writing and is a statement under the respective seals of each of the partners of their

several interests in the firm and its assets, &c. S. S. and C. C. Huntley had entered into copartnership in other mail routes.

Exhibit S. S. H., No. 1, formally recites that S. S. and C. C. Huntley *are the owners of one-third* of the stock, property and effects of what *was* known as the Northwest Stage Company, and share in that proportion in all the mail routes lately operated by said company, and are to share in the future on all those routes in the same proportion in the *ownership, profits, losses and expenses* appertaining thereto, &c.

In the face of this paper, signed and sealed by S. S. Huntley, if the affairs of this company had been operated at a heavy loss, would he have been permitted to open his mouth, to deny his responsibility as a partner in the concern, liable to creditors not only for the full amount of the firm debts, but as between the members of the firm, liable with C. C. Huntley for one-third of the losses?

We have seen that in the matter of the California and Oregon Company, which was operated at a heavy loss, S. S. Huntley not only did not deny his responsibility for the losses, but assumed them and joined in a promissory note for the amount.

It is apparent from the proofs that, under the relations existing between C. C. and S. S. Huntley, and in view of the fact that S. S. Huntley had, for some seven or eight years, labored faithfully for C. C. Huntley, by means of which the latter had made hundreds of thousands of dollars, while the former had had nothing but hard work, food and clothing; that C. C. Huntley did nothing more than was just and right and proper for him to do in making this purchase for S. S. Huntley, who, even now, when he receives from Barlow the amount due him, will not be then com-

pensated fully for his previous services and money expended for the benefit of C. C. Huntley.

The truth is, that C. C. Huntley, who had for years suffered from a glut of money, and who, towards the close of the contract term ending June 30, 1878, had for nearly four years been receiving large sums of money through the talent and labor of S.S. Huntley, not one cent of which he had himself earned, saw that the time was rapidly approaching when his supplies from this source would end, and then conceived the idea, because the contracts between himself and S. S. Huntley were not in writing, of defrauding S. S. of all that he could by means of the uncertain instrumentalities of the law, having nothing to lose and everything to gain by such a course.

It is respectfully submitted that the decree rendered at special term should be confirmed,

ENOCH TOTTEN,
WILLIAM F. MATTINGLY,
Solicitors for S. S. Huntley, Appellant.

114-394

Supreme Court of the United States.

OCTOBER TERM 1884.

No. 201.

SILAS S. HUNTLEY, Appellant,

vs.

CHARLES C. HUNTLEY and BRADLEY BARLOW, Appellees.

APPEAL FROM SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEES.

J. HUBLEY ASHTON,
NATH'L WILSON,
Of Counsel for Appellees.

THOMAS MCGILL & CO., Law Printers, Washington, D. C.

Supreme Court of the United States.

October Term 1884.—No. 201.

SILAS S. HUNTLEY, APPELLANT,

vs.

CHARLES C. HUNTLEY AND BRADLEY BARLOW,
APPELLEES.

Appeal from Supreme Court of the District of Columbia.

BRIEF FOR APPELLEES.

STATEMENT OF THE CASE.

This appeal is from a decree of the Court below, in General Term, in a suit in chancery instituted by Silas S. Huntley, the appellant, against Charles C. Huntley, Bradley Barlow, and Adam E. Smith, for an account of the property and business of what was known as the "Northwest Stage Company," and other relief.

The Court at Special Term rendered a decree in favor of appellant against Charles C. Huntley and Bradley Barlow, and dismissed the bill as to the defendant Adam E. Smith, who, it is admitted, had no interest in the suit. (Rec., p. 223.)

The Court in General Term reversed the decree of the Equity Court against Charles C. Huntley and Bradley Barlow, and dismissed the whole bill. (Rec., p. 224.)

Silas S. Huntley has appealed from that decree.

The principal allegations in the bill exhibited by the appellant are these:

1. That plaintiff and defendants (C. C. Huntley, Bradley Barlow, and Adam E. Smith) were the owners of certain stock, property, and effects of the "Northwest Stage Company," which was engaged in carrying the mails over certain mail routes operated under contracts with the Post-Office Department.

2. That by a certain instrument in writing, dated December 22, 1874, (*Exhibit S. S. H. No.* 1,) the interest of each in the property of said company, and in the profits and losses and expenses attending the operation of certain mail routes, is distinctly set forth and agreed upon, Barlow having a one-half interest, plaintiff and C. C. Huntley a *one-third* interest, and Smith a one-sixth interest.

3. That Barlow has collected the mail pay on said routes up to the expiration of the contract term, June 30, 1878.

4. That plaintiff has requested Barlow to give him a statement of account and pay him something on account of what was due him on his *one-sixth interest*, but Barlow has refused.

5. That subsequent to June 30, 1878, Barlow sold all the property and effects of said Northwest Stage Company for the sum of $75,000, and received the proceeds.

6. That C. C. Huntley is indebted to Barlow on private account, and Barlow is endeavoring to apply said moneys to that debt; that there is a dispute between the Huntleys as to some settlement of accounts between them, and a suit pending relative thereto; and that plaintiff is apprehensive that C. C. Huntley and Barlow may combine in making some settlement by which to defraud plaintiff of the benefit of his said one-sixth interest in the proceeds of said sale and receipts of said mail pay by said Barlow.

The prayers are, in the main, these:

1. That defendants may be required "to answer this bill *under oath* as fully and particularly as if specially interrogated thereto."

2. That Barlow be required to account for the moneys collected by him under the provisions of said contract set forth in *Exhibit S. S. H. No.* 1, and all moneys properly expended on account thereof.

3. That Barlow may be decreed to pay plaintiff the amount justly due him.

4. That Barlow be enjoined from paying to C. C. Huntley any portion of plaintiff's *one-sixth interest* in the proceeds of said sale and collection of mail pay made by said Barlow.

5. That if C. C. Huntley has received from Barlow any portion of plaintiff's *one-sixth interest*, he may be decreed to pay same to plaintiff, and, in default thereof, that Barlow be decreed to pay same to plaintiff.

The bill was answered, as required, *under oath*, by Charles C. Huntley and Bradley Barlow. (Rec., pp. 5–11; 12–21.)

C. C. Huntley, in his answer (Rec., pp. 5–11)—

1. Denies that plaintiff was or is the owner with him, or with the other defendants, of the stock, property, or effects of the Northwest Stage Company.

2. Denies that the paper called *Exhibit S. S. H. No.* 1 is, or was intended to be, a contract or agreement conveying or securing to plaintiff an equal interest or joint ownership with him of an undivided third part or share in said company, its property, &c., or any other interest or share in said company, its property, &c.

3. Avers that the one-third interest in said company, its property and effects, referred to in said paper as belonging

to S. S. and C. C. Huntley, was and is his (C. C. Huntley's) sole individual property, and was purchased and paid for wholly with his own money, and has never been transferred, or assigned, by him, in whole or in part, to any other person or persons.

4. States the history of the concern known as the "Northwest Stage Company;" the original ownership of defendant (C. C. Huntley) of a one-sixth interest; the purchase by him, June 27, 1874, of an undivided *third part* or interest in the Company, and an undivided *fourth interest* in another concern known as the "Oregon and California Stage Company," belonging to James W. Parker, for $75,000; and the sale by defendant (C. C. Huntley) to Barlow of half of the interest in the Northwest Stage Company purchased from Parker, for $30,000: avers that he never, at any time, agreed to buy for the plaintiff and to give to him the said interests, or either of them, and never agreed after they were bought to give them to him, or that he should have them in consideration of his previous services to him, or in payment of any money due to him; that the paper, *Exhibit S. S. H. No.* 1, was intended to be the declaration of all the parties thereto that Bradley Barlow was authorized to receive all the money that might become payable to said Company; that he did not in said paper-writing intend to admit, nor had he ever admitted, but, on the contrary, denies, that the plaintiff was or is, or was to be, an equal owner with him in the said one-third interest in the Northwest Stage Company, except in the event of the repayment to him of the sum of $45,000 expended in the purchase of said shares, with interest thereon; *and that, although no agreement to that effect was ever entered into,* he has always been, and is, willing that plaintiff shall have all the profit in respect of said one-sixth interest in the Northwest Stage Company, and said one-fourth interest in the Oregon and California Stage Company since the 1st of July, 1874, provided there be first paid to him the

said cost-price of said purchase, *to wit*, $45,000, with interest from July 27, 1874. (Rec., pp. 6, 7, 8.)

5. Avers that *no writing, memorandum, or agreement of any kind was made as to said interests*, and his said purposes concerning said purchase, which was made at Washington, and in the absence of the plaintiff. (Rec., p. 7, fol. 10.)

6. Denies that Barlow received the pay on the mail routes, or any part thereof, for the benefit of plaintiff.

7. Admits that a settlement was made with Barlow about the 1st of February, 1876, but says that he then objected to some of the items, and refused to sign the notes which were prepared; that he was informed afterwards that complainant signed them in his own and defendant's names; and that he had subsequently given to Barlow a deed of trust on property in Washington to secure the payment of said notes.

Bradley Barlow, in his answer (Rec. pp. 12–21), says:

1. That he has no personal knowledge, except as stated, as to plaintiff's ownership of an interest in the Northwest Stage Company, and therefore neither admits nor denies the averments as to such ownership in the bill, but leaves the plaintiff to make such proof thereof as he may be able to adduce.

2. That he *denies* that the paper-writing (*Exhibit S. S. H. No. 1*) *is*, or *was intended* to be, a contract, or agreement, conveying or securing to plaintiff an interest and partnership in the Northwest Stage Company, its property, &c.

3. That the original draft of the said paper was prepared by him; that Charles C. Huntley was suffering from a stroke of paralysis, which had impaired his physical and mental strength, and was about to go abroad for an indefinite time; that he (Barlow) was desirous of obtaining, for his own protection, from all persons who had or claimed to have any interest in the Company, a formal declaration

of his authority to collect all moneys due the Company; and that he prepared the said paper in order to obtain the written recognition of the authority which C. C. Huntley and Adam E. Smith had verbally given him to collect and receive all the money due the Company during the whole of the term of the contracts, running from July 1, 1874, to June 30, 1878. (Rec., p. 12.)

4. That plaintiff had previously said to him something concerning his alleged interest with C. C. Huntley in his share in the Company, but plaintiff did not state the precise nature of his claim.

5. That at the time the said paper was signed, nothing was said by any of the parties thereto as to their respective interests, and C. C. Huntley was informed that the paper was a recognition of his authority to collect the moneys that might become due said Company, "and such, in fact, it was intended to be, and nothing other than that."

6. That at that time Charles C. Huntley was not in a fit condition, mentally or physically, to make a new contract, or to enter into any new arrangement, or agreement, as to his business. (Rec., p. 13.)

7. That by the terms of the said paper it was declared that he (Barlow) had full power to collect the pay on said mail routes during the entire term of the said contracts, for the benefit of all the parties named therein, and in the proportions therein stated, but avers "*that the proportion due, or claimed to be due, to the plaintiff, was not therein stated, and was not intended to be therein stated.*" (Rec., p. 14.)

The appellant filed the general replication. (Rec., p. 20.)

It will be found, we think, unnecessary by the Court to wade through the mass of testimony in this record, in order to reach a proper determination of the cause.

The Court will observe that the plaintiff's actual *case* was

set up for the first time by him, in the course of his testimony as a witness for himself in the cause.

The *bill* simply sets forth the alleged ownership of the interest here claimed in the Northwest Stage Company as an existing *status* (so to speak), without disclosing any antecedent facts or transactions by which such interest was acquired.

The plaintiff, as a witness in his own behalf, for the first time, disclosed that he claimed to be the owner of an undivided sixth interest in the property and business of that Company, by alleged *purchase from the defendant, Charles C. Huntley.*

The history of his alleged acquisition of the title to that interest is given by appellant in different parts of his voluminous testimony in this cause.

It will clearly appear (and to this point we shall first address ourselves in the argument) that even if the contract which the appellant alleges, in his testimony, was made with him by Charles C. Huntley, for the sale of a sixth interest in the Northwest Stage Company, were proved, (as clearly it is not,) it would be *void*, under the seventeenth section of the Statute of Frauds.

The material facts appear to be these:

The Northwest Stage Company was a joint stock enterprise for carrying the mails, under contracts with the Post-Office Department, through Idaho, Oregon, Utah, and Nevada. (Rec., pp. 21, 40.)

The shares or interests in the Company appear to have been divided into sixths.

It operated mail routes for the contract terms from 1870 to 1874 and from 1874 to 1878.

The original owners were Bradley Barlow (two-sixths), James W. Parker (two-sixths), Owen Teller (one-sixth), and Adam E. Smith (one-sixth).

Charles C. Huntley bought out Owen Teller, probably,

in 1872, paying him for his one-sixth interest, and his one-fourth interest in another similar concern, known as the California and Oregon Stage Company, $100,000. (Rec., p. 40, fol. 52.)

On June 27, 1874, a bill of sale of Parker's undivided *one-third* interest in the Northwest Stage Company, and of his *one-fourth* share of the California and Oregon Stage Company, was executed in the city of Washington by Parker to Charles C. Huntley, in consideration of the sum of $75,000. (See bill of sale, Exhibit No. 1 to answer of Huntley, Rec., p. 10; also, testimony, Rec., p. 129.)

Charles C. Huntley thus became the owner of three-sixths of the stock of the Northwest Company, and two-fourths of the stock of the California and Oregon Company.

Shortly after purchasing Parker's interest, Charles C. Huntley sold to Bradley Barlow *one* of the two-sixths interest in the Northwest Stage Company so purchased from Parker, for the sum of $30,000. (Rec., pp. 57, 58; answer, Barlow, Rec., p. 13, fol. 19.)

This left C. C. Huntley the owner of an undivided *third* interest in that Company, and of a *two-fourths* interest in the Oregon and California Stage Company.

The pretension on the part of the appellant, in his testimony, is, that, in July, 1874, he became the owner of a sixth interest, or share, in the Northwest Stage Company, and a fourth interest, or share, in the Oregon and California Stage Company, by a *parol contract of sale* (it is not pretended that there was any *writing*) between Charles C. Huntley and himself, the consideration of which was an alleged indebtedness by Charles C. Huntley (the appellant) for services previously rendered by him as agent, manager, &c., of Charles C. Huntley, in his business as mail contractor and stage-line owner, during the preceding eight years; and that contract is put forward by the appellant as the foundation of his claim of ownership of a sixth

interest in the Northwest Stage Company, sought to be enforced by the present bill.

Silas S. Huntley, the appellant, was not in Washington when Charles C. Huntley purchased the Parker interest in the two Companies, described in the bill of sale above referred to, dated June 27, 1874.

It appears that he was at that time in Boise City; and he states in his testimony that, while there, he received a telegram from C. C. Huntley, saying that he had purchased Parker's interest. (Rec. p. 22.)

That telegram the appellant did not produce.

The appellant further testified that in July, 1874, he was on his way east, when he met Charles C. Huntley, on his way west, at or near Salt Lake City; that C. C. Huntley was not looking very well; that he went with him from Salt Lake City to San Francisco; and that, in the course of that journey, the agreement was made between them for the purchase and sale of the interest in the Companies, claimed by appellant in this suit.

Charles C. Huntley, it appears, soon after the conversations to which the plaintiff testifies, was stricken with paralysis; and having been brought from San Francisco to New York, in September, 1874, was sent to Europe in January, 1875, for his health. (Rec., pp. 108, 109.)

The following are the material portions of the testimony given by the appellant in relation to the alleged contract of sale:

"While in Salt Lake, C. C. Huntley agreed that I should have this equal unincumbered interest with him in the Northwestern Stage Company, and in the California and Oregon Stage Company, from July 1, 1874. I left him in San Francisco, and went up over the California and Oregon road to Walla Walla. From there I started on my way east, expecting to put our affairs on paper when we returned east." (Deposition of S. S. Huntley, Rec., p. 22, fol. 29.)

The alleged consideration for this agreement is thus stated:

"It was on account of this *indebtedness* of C. C. Huntley to me in this unsettled business—there having been no regular books kept to settle our accounts for that whole time (eight years)—that he agreed to give me this interest unincumbered." (Ibid., p. 23.)

Again:

"In consideration of my previous services and contracts that I had been interested in, as it was difficult to settle what the indebtedness might be, he agreed to give me an equal unincumbered interest with himself in the California and Oregon and in the Northwestern Stage Company, with the request, as he was not feeling very well, that I should be general manager of the concern for one year." (Deposition of S. S. Huntley, Rec., p. 25.)

Again:

"There was never any agreement that I should pay him anything, except to cancel his indebtedness for the eight years' unsettled business." (Ibid., p. 26, fol. 34.)

On cross-examination, S. S. Huntley testified as follows:

147 Q. "Where did the subject of this purchase first become matter of conversation and consideration between you and C. C. Huntley?

A. "Either at Salt Lake or on the railroad cars going to San Francisco, or in San Francisco; it was on that trip." (Ibid., Rec., p. 34.)

* * * * * * * *

154 Q. "Have you ever paid anything in money or other valuable consideration, except your own services, for your alleged interest in the Northwestern Stage Company or the California and Oregon Company?

A. "I have never paid any money. I paid my own services, and what money might be in C. C. Huntley's hands as dividends coming from the Sweetwater in Wyoming, and I had small routes in Nebraska and Kansas.

155 Q. "Did you ever render any statement of the

amount alleged to be due you in respect to the interests you have mentioned?

A. "No, sir; never.

156 Q. "Can you state their aggregate?

A. "I can state what I suppose I was entitled to in 1874. It was $75,000 or $100,000.

158 Q. "Did you ever name these figures to C. C. Huntley?

A. "No, sir.

168 Q. "Then I understand you to say that you did not pay any money, or valuable consideration, other than your services and the interest you have mentioned, for the share you claim in these two companies?

A. "No, sir; I did not.

169 Q. "In respect of any indebtedness that occurred in the business of the Company, have you ever paid or made any contribution towards the payment of any sums of money other than the moneys earned by the Company, or the proceeds of the sale of the Oregon interest?

A. "No, sir; I have not." (Ibid., p. 36.)

In his *re-direct testimony*, the plaintiff returns to this alleged contract, and we now give the material parts of his testimony on that subject.

He says:

"While somewhere in Oregon, some time about the 1st July, (1874,) C. C. Huntley telegraphed me that he had purchased that interest, and I immediately understood that he had purchased Parker's interest for me, according to the way we had talked it over. Soon after that, some time in July, I came down to Salt Lake, and met C. C. Huntley, and he told me, as he had already telegraphed, that he had bought the interest for me, and we talked the matter over, to the effect that I should go ahead and manage the routes. We also talked the matter over in the cars, as I went with him from Salt Lake to San Francisco. And, finally, in San Francisco, *it was agreed what I should pay for it, and it was to cancel all his indebtedness to me up to that date.*" (Deposition of S. S. Huntley, Rec., p. 48.)

The foregoing is substantially all the testimony given by

the appellant in regard to the alleged contract between himself and C. C. Huntley, which he sets up as vesting him with an undivided sixth interest in the property and business of this Company.

The truth of this testimony is denied by the defendant, C. C. Huntley; but conceding the testimony is all true, the contract is not one which the law recognizes as the foundation of any right to the property sought to be recovered.

ARGUMENT FOR APPELLEES.

First.

The contract set up by the appellant, in his testimony, as the foundation of his claim, in this suit, if it were proved, as matter of fact, would be void under the seventeenth section of the Statute of Frauds.

1. The 17th or "chattels" section of 29 Carl. II, c. 3, is in force in this District, and enacts as follows:

"No contract for the sale of any goods, wares, and merchandise for the price of ten pounds sterling, or upward, shall be allowed to be good, except the buyer shall accept part of the goods sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or that some note or memorandum, in writing, of said bargain be made and signed by the parties, to be charged by such contract, or their agents, thereunto lawfully authorized." (Kelty's Eng. Statutes, 242: Thompson's Digest, 221.)

The contract to which appellant testifies is a purely verbal contract for the transfer to him, by Charles C. Huntley, of a sixth interest, or share, in the Northwest Stage Company, its property and business, in consideration of an *agreement* by appellant to discharge, or cancel, an antecedent indebtedness of Charles C. Huntley to him for services, &c., during the eight years preceding the alleged transaction.

This is a pretended contract of *sale* of the interest mentioned, within the legal definition of a sale.

Blackstone's definition is, "a transmutation of property from one man to another in consideration of some price." (2 Bl., 546.) Kent's is, "a contract for the transfer of property from one person to another for a valuable consideration." (2 Kent, 615.)

2. It was a pretended contract for the sale of "goods, wares, and merchandise," within the meaning of the "chattels" section of the Statute of Frauds, whether the subject-matter was the interest in the corporal property, the stages, horses, fixtures, &c., of the Company, or the share of the stock or interest in the Northwest Stage Company considered as, in effect, a joint-stock enterprise or partnership.

The "Northwest Stage Company" was, it seems, a species of partnership with joint stock divided into transferable shares. The shares were held as *separate* property, and not as joint property, and could be sold without affecting the perpetuity of the Company. They were substantially like *stock* in corporations, or regular joint-stock companies.

It is one of the characteristics of a joint-stock company, or a partnership with the incidents of such a company, that every partner, or share owner, has the right to part with his interest, or share, without the consent of the others. (Parsons on Partnership, p. 588; Lindley on Partnership, 4.)

It may be deemed the general American doctrine, that the words "goods, wares, and merchandise," as used in the Statute of Frauds, properly embrace not merely palpable personal property, having an intrinsic value, but also stocks in chartered corporations, shares or interests in joint-stock companies, or private partnerships having the incidents of such companies, notes, checks, bonds, and other evidences of value.

Contracts relating to those subjects are properly held to be within the meaning of the Statute of Frauds, which was intended "to prevent the false and fraudulent assertion against men of engagements they never made." As said by Judge Black, "it prevented perjury by removing beyond the reach of perjury the subjects on which it thrived." (9 Ops., 188.)

In Massachusetts the doctrine is well settled. In *Tisdale* v. *Harris*, (20 Pick., 13,) Shaw, C. J., placed the decision, that shares in a manufacturing company were to be deemed included by the words "goods, wares, and merchandise," upon two grounds: First, that by correct legal definition "goods" and "merchandise" were both sufficiently comprehensive to include shares; and, secondly, that the policy of the statute required that they should be included. That great judge rejected the argument, in the English cases, that shares cannot be actually accepted and received as at all conclusive of the question. "The provision," he says, "is general that no contract for the sale of goods, &c., shall be allowed to be good. The exception is where part are delivered; but, if part cannot be delivered, then the exception cannot exist to take the case out of the general prohibition. The exception may very well be construed to apply to such of those objects to which it is applicable, without affecting others, to which, from their nature, it cannot apply."

In *Baldwin* v. *Williams*, (3 Met., 367,) the principle was extended to contracts for the sale of *promissory notes*. (See, also, Boardman *v.* Cutter, 128 Mass., 390; Somerby *v.* Bunting, 118 Mass., 279).

The Supreme Court of Connecticut has fully concurred in the doctrine of *Tisdale* v. *Harris*. (*North* v. *Frost*, 15 Conn., 404.)

The subject has been carefully examined in Maine, the statute of that State using the words, "*goods and merchandise;*" and it has been decided that shares of stock and

promissory notes are within its Statute of Frauds. (Pray *v.* Mitchell, 60 Maine, 435; Gooch *v.* Holmes, 41 Maine, 523.)

In New York, United States bonds are held to be within the statute. (Brownson *v.* Chapman, 63 N. Y., 625.)

Contracts for mining stocks must, under the law of California, be in writing. (Mayer *v.* Child, 47 Cal., 144.)

In Missouri, shares of stock are within the Statute of Frauds. (Fine *v.* Hornby, 2. Mo. App., 64.)

Book accounts are within the statute in Georgia (Walker *v.* Supple, 54 Ga., 178); land scrip in Wisconsin (Smith *v.* Bouck, 33 Wis., 27); and an interest in a railroad in Iowa (Kauffman *v.* Harstock, 31 Ia., 473).

In Maryland it was early decided that a contract for the sale of bank stock was within the "chattels" section of 29 Car., II. (Calvin *v.* Williams, 3 H. & J., 42.) And in this District, in the case of *Riggs* v. *Magruder* (2 Cranch C. C., 143), it was adjudged that a contract for the sale of the notes of a private bank was governed by that statute.

The case of *Pray* v. *Mitchell* (60 Maine, 435) is so much in point here that a full citation from it may be allowed.

In that case the question was whether a contract for the sale of a portion of the individual interest of a partner in a private firm, where the business, &c., was divided into sixteenths, was governed by the Statute of Frauds; and the Court, upon the authority of the leading cases of *Tisdale* v. *Harris*, 20 Pick., 91, *Baldwin* v. *Williams*, 3 Met., 365, and *North* v. *Frost*, 15 Conn., 400, held that, as the firm of N. O. Mitchell & Co. was, to all intents and purposes, a joint-stock company, a contract for the sale of a share of the individual interest of one of the partners in the stock of the concern must, in the absence of the other requisites of the Statute of Frauds, be proved by some note or memorandum in writing.

The Supreme Court of Maine in that case said:

"In the former case (*Tisdale* v. *Harris*, 20 Pick.) the question was very fully considered, and the conclusion reached was, that there was nothing in the nature of stocks, or shares in companies, which in reason or sound policy ought to exempt contracts respecting them from those reasonable restrictions, designed by the statute to prevent frauds in the sale of other commodities; that, on the contrary, joint-stock companies have become so numerous, and so large an amount of the property of the community is now invested in them, as the ordinary *indicia* of property arising from delivery and possession, cannot take place, there seems to be peculiar reason for extending the provisions of the statute to them; that the words '*goods*' and '*merchandise*' may properly include stock or shares in such companies; and as contracts for the sale of such stock or shares is clearly within the *mischief* which the statute was designed to prevent, they ought to be held to be within its letter and spirit. And in the latter case (*North* v. *Frost*, 15 Conn., 400) the Court say that this document is not only supported by the greater weight of authority, but that it is founded on good sense; that such contracts fall *clearly within the mischief which the Legislature intended to remedy;* for there is as much danger of fraud and perjury in the parol proof of contracts for the sale of interests in joint stock as in contracts for the sale of any other commodities.

"The firm of N. O. Mitchell & Co. was to all intents and purposes a joint-stock company. The stock was divided into sixteenths. The defendant owned four-sixteenths, which was equal to one-quarter of the whole. The plaintiff says, in substance, that the contract was for the purchase of five or six hundred dollars' worth. Now, if we assume that this was not a contract or agreement to become a member of the firm, but a contract with the defendant alone to purchase a share of his individual interest in the capital stock of the company, must it not, in the absence of delivery, which was impossible, and in the absence of earnest or part payment, which is not claimed, be proved by some note or memorandum in writing, signed by the party to be charged, or his agent? Clearly so."

3. It cannot be pretended, in this case, that the Statute of Frauds was satisfied by an acceptance and actual receipt of the interest in the company alleged to have been purchased, or by the payment, or part payment, of the alleged price of that interest, by the appellant.

In regard to what shall amount to payment of the price, the construction of the Statute of Frauds has always been, that no mere agreement to pay money, without actual payment, or giving credit by some manual act, is sufficient to satisfy it. *Something must pass between the parties besides mere words*—some overt, symbolical act, like the payment of earnest money, *or the giving of a receipt or credit in writing for such payment, where the same consists in the release or extinguishment of a debt previously due from the seller to the buyer.* (Artcher *v.* Zeh, 5 Hill (N. Y.), 205; Brabin *v.* Hyde, 32 N. Y., 519; Smith *v.* Bouck, 33 Wis., 27.)

Nothing of the kind is alleged by the appellant in this case. No symbol even is pretended to have passed between the parties. According to the appellant's account, everything was in parol. If there ever was a case that illustrated the wisdom of the Statute of Frauds, and the interpretation and effect given to it by the American courts, this is that case.

SECOND.

The appellant has not established, by proof, the parol contract set up by him, whereby he claims he became the owner of an undivided sixth interest in the Northwest Stage Company.

1. The rule is, that a responsive answer must be overcome by the testimony of more than one witness, or by the evidence of one witness, corroborated by other proof of like value. (Stearns *v.* Stearns, 8 C. E. Green, 168; May *v.* Sloan, 101 U. S., 237.)

In this case, there is no testimony, as will be seen, to the alleged fact on which the bill is predicated, except that of

the complainant himself, in which he is contradicted expressly and explicitly by the testimony of the defendant, Charles C. Huntley.

2. The bill contains only a general allegation of ownership, by appellant, of a sixth interest in the Northwest Stage Company, without disclosing any antecedent facts or transactions, by which such ownership was acquired.

The denial by the defendant of appellant's ownership is in itself a denial of any and every antecedent transaction by means of which such ownership could be acquired.

It is disclosed by appellant's testimony, when he appears as a witness, that he claims to be owner by virtue of a purchase from the defendant, Charles C. Huntley, on certain alleged terms.

If this case had been set forth in the bill—as it should have been—it would have been open to answer, either admitting or denying it.

The defendant's denial, therefore, that appellant was to become the owner of the interest claimed, except in the event of the repayment to the defendant of the amount expended by him in the purchase of the share, and his further denial that any agreement, even to that end, was ever entered into between himself and the appellant, is responsive to the bill, under the settled rules of equity pleading. (3 Greenleaf's Evidence, sec. 285; Dunham *v.* Jackson, 6 Wend., 22; Bank of Columbia *v.* Black, 2 McCord, Ch. R, 344; Schwartz *v.* Wendell, Walk. Ch., 269.)

In *Dunham v. Jackson*, the bill was to redeem certain stock as pledged for $500. The answer that the stock was pledged for $800, in addition to the $500, alleged in the bill, was held to be responsive, and not the allegation of new matter in avoidance of the equity admitted by the answer. In *Bank of Columbia* v. *Black*, the bill alleged that the Bank had a judgment against Harris, and that

defendant Black was a debtor to Harris for unpaid balance of purchase-money, having purchased Harris' house under a foreclosure sale. Black, in his answer, not only denied any indebtedness, but stated what the arrangement actually was in the transaction by which he appeared to be a mere purchaser. This explanation was held to be responsive. So, in *Schwartz* v. *Wendell*, Chancellor Manning stated, that the answer "may also be sometimes evidence of a fact not stated in the bill; as where the bill sets forth *part only of complainant's case*, instead of the whole, and the part admitted and stated in the answer shows a *different case*, and is not matter in avoidance merely. Here the answer, instead of being responsive to a particular fact stated in the bill, was *responsive to complainant's case*, which the answer denied by showing a *different case*."

The principle of these decisions applies to the present case. If the appellant had stated, in his bill, his whole case, as alleged in his testimony, it would have been that he claimed to be the owner of an undivided one-sixth interest in the Company by *purchase from Charles C. Huntley;* and to that case the latter had a right to answer, just as if it had been alleged in the bill.

3. The plaintiff's alleged ownership by purchase from Charles C. Huntley is not established by testimony which overcomes the denial of the answer.

The witnesses in support of the bill were the appellant (S. S. Huntley), J. W. Parker, L. H. Hershfield, and Bradley Barlow.

The substance of the appellant's testimony, as a witness, has already been given in the preceding statement of the case.

His own deposition is the only evidence, adduced by him, that Charles C. Huntley sold, or agreed to sell, to him one-half of the Parker interest in consideration of an antecedent indebtedness.

On the other hand, Charles C. Huntley, as a witness on his own part, testifies to the effect that he never made such an agreement, and that he did not, in fact, owe anything to the appellant, at that time, but that the appellant was all the time in debt to him. (See deposition of C. C. Huntley, Rec., pp. 100, 101, 102, 105, 106.)

The testimony of J. W. Parker and L. H. Hershfield appears to have no material bearing on the case. (Deposition of Parker, Rec., pp. 42–45; L. H. Hershfield, Ib, pp. 132–141.)

The testimony of Bradley Barlow is, in substance, as stated in his *answer*, that he knows nothing of any such agreement as the appellant testifies to, between him and C. C. Huntley. (See depositions of Bradley Barlow, Rec., pp. 57–61; 126–129.)

C. C. Huntley never stated or admitted to Mr. Barlow that he had *sold* or *transferred*, or *agreed* to sell or transfer, to S. S. Huntley, any interest in the company.

Mr. Barlow testifies that C. C. Huntley spoke on the subject but *once*, and he then said *very little*, and *only* what indicated to him (Barlow) that he intended to *let S. S. Huntley have* an equal interest with himself in the Company. (Deposition of Barlow, Rec., p. 58, fol. 76.)

On what terms, and by what agreement, he intended to let him have such an interest, were not stated; but it would be implied, of course, that he meant to let him have it on substantially the same terms as those upon which he had just let Mr. Barlow have one of the sixth interests purchased from Parker.

C. C. Huntley had let Barlow have a sixth purchased from Parker, on his paying for it; and he meant to let S. S. Huntley have a sixth on the same terms.

After this conversation, C. C. Huntley went to California, and was brought back sick. S. S. Huntley returned with him. Barlow says that he "guesses" *he told S. S. Huntley what C. C. Huntley had said* about it, and they acted upon

the *theory* that he (S. S. H.) *was to be* an equal owner with C. C. Huntley in that service. (Deposition of Barlow, Rec., p. 59, fol. 78.

C. C. Huntley never told Barlow that he had made any such agreement with S. S. Huntley as that stated by S. S. Huntley, or had made any agreement with him whatever.

Nor does it appear that S. S. Huntley stated to Barlow, after his return from the west, that C. C. Huntley had agreed to give him one of the sixths purchased from Parker, in consideration of his previous services.

If Barlow told S. S. Huntley, on his return east, what C. C. Huntley had said, he told him simply that C. C. Huntley had said that he intended to let S. S. Huntley have an amount of interest in this Company equal to his own.

It is morally certain that the claim of absolute ownership of that interest put forward by the appellant is based entirely upon such talk as that to which Mr. Barlow testifies, and that there was no such agreement between the Huntleys as that stated by the appellant in his testimony.

If there had been such an agreement, it would unquestionably have been made known, in the clearest manner, to Mr. Barlow, upon the return of the parties from the west.

Mr. Barlow says:

"I never knew of any writing or any understanding in existence by which it was a recognized partnership with him. Mr. Huntley about that time failed in his health pretty much utterly, and the business was gotten along with the best way it could be without having any knowledge of what the transaction was, and how they had fixed it up among themselves." (Deposition of Barlow, Rec., p. 58, fol. 76.)

This is entirely inconsistent with the idea that the parties had come to an absolute agreement in California, by which the appellant had acquired the ownership of a sixth interest

in the Company. If they had, Mr. Barlow would certainly have been informed of it, and the business would not have been left to get along the best way it could, without *his* having "any knowledge of what the transaction was, and how they had fixed it up among themselves."

If there had been any honest claim of ownership by the appellant, he, at least, would have made known distinctly and clearly to Mr. Barlow on what it was based, and it would not have been left for Mr. Barlow to tell *him* what C. C. Huntley had said after the purchase from Parker.

THIRD.

The history and object of the power of attorney to Bradley Barlow, of December 22, 1874 (*Exhibit to Bill, S. S. H. No.* 1), *as shown by the evidence for the appellees.*

1. The appellant, it will be seen, introduced in evidence certain papers relative to the business of these parties, and, among them, the document called *Exhibit S. S. H. No.* 1, as, in his view, apparently tending to prove the alleged transaction between him and C. C. Huntley, on which his claim in this case is predicated.

The bill avers that, by such instrument, "the interest of *each* in the *property* of said Company, and in the *profits and losses* and *expenses* attending the operation of certain mail routes, is distinctly set forth and *agreed upon*—the said Bradley Barlow having a one-half interest, *the said C. C. Huntley and myself a one-third interest*, and the said Adam Smith a one-sixth interest." (Bill, Rec., p. 1; Exhibit S. S. H. No. 1, p. 4; also p. 61.)

That is denied in their answers by C. C. Huntley (Rec., p. 5) and Bradley Barlow. (Ib., p. 12.)

This paper, on its face, is no such *agreement* as the appellant claims; and the answer and testimony of Mr. Barlow, who prepared it for his own security, under the circumstances to be mentioned, show that it was not designed or intended to be such an agreement between the parties.

We insist, moreover, that if the paper in question could be interpreted as an *agreement* between the appellant and C. C. Huntley in relation to the third interest of the latter in the property of the Company, or as importing an *admission* prejudicial to C. C. Huntley and beneficial to the appellant in respect to that interest, the transaction as such could have no validity or effect in the then condition of the health of C. C. Huntley, and in view of the relations of confidence, influence, and trust borne toward him, at that time, by the appellant.

The evidence shows that C. C. Huntley was stricken with paralysis, at San Francisco, in July, 1874, and in September was brought to New York. The plaintiff had been for eight years his confidential clerk, agent, and manager in his business in the West, and was also a partner with him in certain mail routes. When defendant was stricken down, it became necessary that some one should take the entire charge and management of his business. The only person competent for such a trust, from knowledge of his affairs, was the plaintiff; and in December, 1874, preparatory to defendant's leaving for Europe, from whence it is evident he was not expected to return, the defendant executed to the plaintiff a general power of attorney, which vested him with full authority over his business affairs. The plaintiff was asked to produce this power. He admitted he had received it, but said he did not know what had become of it. (Deposition of S. S. Huntley, Rec., p. 33, fol. 44..)

The appellant, however, *did* produce the paper, designated as *Exhibit S. S. H. No.* 1, prepared by Mr. Barlow, at the same time, under the circumstances and for the purpose mentioned in his testimony, as follows (Rec., pp. 126–128):

"Q. Please examine Exhibit S. S. H. No. 1, filed with the bill of complaint, and state when, by whom, and

under what circumstances, and for what purpose, it wsa prepared.

[Objected to by counsel for plaintiff.]

"A. I think the idea of having something of that kind was suggested to me for the security of myself and all concerned. I think Mr. C. C. Huntley was going to Europe about that time, and there were very good reasons to my mind why something of that kind should be done. There were four parties interested, as I *supposed*, and the *contracts were in the names of different parties;* and for *my own security* I desired to have something of that kind, and I thought it was equally desirable for the others that there should be something of that kind. I think that I wrote the original myself, and that Mr. Chapman, who did work for me, copied it, and copies were given to all the parties who signed it. I think it was executed at the Arlington Hotel, in this city, but it may have been at my house. I should rather be inclined to think, however, that it was executed at the Arlington, *because Mr. Huntley was then in a feeble condition, and I see he signed it.* I think it was just on the eve of his departure for Europe.

"Q. Did you receive, at that time, any information from C. C. Huntley as to the interest of S. S. Huntley in the contracts of the Northwest Stage Company?

"A. I do not think that *C. C. Huntley ever spoke a word to me about it, except the first time he told me he was going to let Si have an interest in these routes equal to his own,* and that he was purchasing it with a view of letting him have an interest. *I do not think he ever mentioned the subject to me at all afterwards. I am very sure that there was not anything said about it at this time.*

"Q. Have you any recollection whether C. C. Huntley read the paper, or whether it was read to him before he signed it?

"A. *I have not any recollection about that.*

"Q. Did you at that time, or at any time prior to the filing of the bill in this case, have any information from C. C. Huntley or S. S. Huntley as to their respective rights and interests in the one-third of the Northwest Stage Company?

"A. I thought it was very remarkable *that there was never anything said to me about it;* but I always considered, from what Charley said to me, that in some way Si was *going to have the interest that is set down in that paper*, and I

never heard Charley say anything to the contrary in our settlements, or otherwise. He never said anything about on what terms he held it at all; but I *supposed*, when I drew up that paper, that I was drawing it up in accordance with the facts in the case, and that the terms upon which he held it were understood between them. *I had no information from either about that, and I did not know anything about it.*

"Q. And the recitals in the papers were drawn up by you without any direction from either C. C. or S. S. Huntley?

"A. *I do not think I had any directions about it from anybody. I assumed that that was the fact. At that time Charley's health was in bad condition, so that he could not do anything himself about his business, and Si had charge of all other business*, and I made that paper for *my own* security more than anything else, and at the same time securing the others, as I *supposed*, in their rights.

The physical and mental condition of C. C. Huntley, at this time, is described by Mr. Barlow, Mr Wilson, Mr. Thomas S. Huntley, the father of C. C. Huntley, and Mr. L. B. Church.

Mr. Barlow testified as follows:

"Q. What was C. C. Huntley's physical and mental condition at that time—December, 1874?

"A. His physical condition was very bad, and it was pretty difficult to tell what his mental condition was because of his inferior condition physically; I know that we thought that a trip to Europe was the best thing to do. Si and I talked it up, and thought it was a good thing for him to go.

"Q. From that time, what management and control of all the business of C. C. Huntley, so far as you know, was taken by S. S. Huntley?

"A. I think that he assumed the entire control of all his business. I had the impression that he had a power of attorney to control his business; I do not know that I am correct about that." (Deposition of Barlow for defendants, Rec., p. 128.)

Mr. Wilson states as follows:

"In December (1874), and in the conversations which I had with Mr. Barlow and S. S. Huntley, they stated that

they thought it best he should go to Europe, to some German baths, I think, and I have no doubt I expressed my assent. I was also informed by them that a power of attorney had been given, made by C. C. Huntley, to Mr. Barlow, giving him authority over the business of the Northwest Stage Company, and that a power of attorney had been given to S. S. Huntley, giving him full authority and control over all the business and personal property of C. C. Huntley. Neither of these powers of attorney was shown to me at the time, and I did not see them till long afterwards. Up to the time of C. C. Huntley's departure for Europe, which was in January, 1875, and after his departure for California, in June, 1874, I had no conversation whatever with C. C. Huntley as to his business; and when I saw him in September, October, November, and December, 1874, and up to the time of his departure for Europe, *he could not talk so that I could understand him, and was not able to give me any directions about his business if he had desired to do so. He walked with great difficulty, and no one could understand what he said except those accustomed to hear him constantly; and he was not in any condition to transact business.* He returned from Europe after an absence of some months. During his absence all his money affairs were in the hands of S. S. Huntley, and he transmitted moneys to him from time to time. He returned from Europe somewhat better, and I was able to understand him when he spoke, and after that he went to the Sandwich Islands. Then he came back and went to Europe again. The date of the second visit to Europe I do not remember. During all that time he paid no attention to his business, and left all his affairs, except his real estate, which he owned in common with Mr. Barlow, to Mr. S. S. Huntley." (Deposition of Mr. Wilson, Rec., pp. 108, 109.)

Mr. Thomas S. Huntley, defendant's father, also testifies to the condition of his son from the time he was brought from San Francisco to about the time he went to Europe, as follows:

"Q. 34. After you saw him on his way to California, when did you next see him?

"A. It was in September; I think it was in September

when he came on; Si was with him and another gentleman in attendance; I do not remember his name. They were bringing him on, you might say, almost helpless. I joined them at Chicago, and went on to New York. I stayed with him there some three months, until he materially improved, so that he came out to my place at Huntley, Illinois.

"Q. 35. What was his condition from the time he returned to New York until he again went home with you?

"A. He didn't really realize where he was, but thought he was in California, where he had dropped over with this paralysis. He seemed to have in mind that he was in San Francisco. He appeared to rouse up at a time when in New London, and inquired where he was. I told him in New London and the British Possessions. Dr. Keys asked him where he was, two weeks after, and he said in New London and the British Possessions and California.

"Q. 36. Was he at that time in a condition to attend to business?

"A. No, sir; he was not.

"Q. 37. Now, will you state what arrangements were made between you and the plaintiff, Silas S. Huntley, in regard to the management of the business of C. C. Huntley, when you were with your son in New York?

"A. That arrangement was that he was to attend to Charley's business; go right on with it just as he had before; he understood all of his business." (Record, pp. 82, 83.)

Mr. L. B. Church, also, testifies as follows:

"Q. Did you see C. C. Huntley in the summer of 1874; if so, when and where?

"A. I saw him in 1874 before he was sick and after he was stricken with paralysis. I met him here just before he went over to New York. That was in the summer, or just after Congress had adjourned—some time in June. Then he went over to New York, and then I saw him on his way to California at Chicago; met him in the Grand Pacific Hotel. He had then recovered from his first attack in New York. He went on West.

"Q. You say he had recovered from his first attack in New York?

"A. He was all right, except that he looked as though he had been sick; talked straight; walked straight. I was visiting with his father, and advised him not to go West, but he said he must go to Salt Lake, and then he went on to California. There was where he was stricken down.

"When did you see him next?

"A. Saw him next when he was on his way from California. Si was bringing him to New York. I went aboard the cars near Chicago at my home, and saw him.

"Q. What was his condition then?

"A. Well, he did not know much of anything then. He recognized me in a sort of blind way. His sister, who resided there, went on board the cars with me. He seemed to recognize her, but he did not know much of anything. He could not talk.

"Q. That was when?

"A. That was in 1874, I think; if I am not mistaken, in the month of August, 1874.

"Q. When did you see him next?

"A. I saw him in New York, directly after—probably not more than two or three weeks—somewhere around there. I came on here, and Si went to New York with me. I went over there to see him.

"Q. Just before he sailed for Europe?

"A. Just before he sailed for Europe He was then making preparations to sail for Europe. That was what I gained from Si.

"Q. Si told you he was going to Europe?

"A. I think he did.

"Q What was his condition at that time?

"A. Well, he was very bad. At times he seemed to understand some things, and at times he was bewildered about everything. I dropped on a good deal of his mistakes riding out with him. He pointed out buildings as being in San Francisco. I told him he was in New York, and not in San Francisco. His father was with us. Going down Fifth avenue, he pointed out some San Francisco buildings. *I thought his mind then very weak.*

"Q. Did you have any transactions with him at that time?

"A. I did have, but I did no business with him. *I wanted to, but did not.*" (Rec., pp. 67 and 68.)

The testimony of Mr. Barlow, above given, in the light of which the instrument in question is to be read, explains its recitals which refer to the Huntleys as owners of a third interest, without purporting to designate the *proportion* of that interest owned by each.

The recitals in such an instrument may always be contradicted or explained. (1 Greenl. Ev., 285.) The testimony shows, as we have seen, that the recitals were not the result of any knowledge on the part of Mr. Barlow, or of any information or statement received from C. C. Huntley, but of his mere *supposition* that S. S. Huntley was going to have an interest, and that, as the sole purpose of the paper was to place in Mr. Barlow's hands authority to collect the moneys referred to, it was deemed by him proper to include the names of all who had, or might have, or claim to have, an interest in the subject-matter.

The recitals, therefore, conclude nothing, and signify nothing, as to the actual and legal ownership of the property, or any interest or share therein, as between the parties.

There is nothing in the paper which has, or can be given, the effect of an agreement between C. C. Huntley and the appellant, that the latter was, or was to be, the owner of an undivided sixth interest in the property of the Northwest Stage Company, as claimed in the bill.

3. Nor, in the circumstances in which was prepared and signed, as exposed by the testimony, can the appellant be allowed to set up the instrument in this suit as a binding admission, prejudicial to Charles C. Huntley, in regard to his share or interest in that Company.

It is shown, by all the evidence in this case, that, in December, 1874, the appellant was in a position and relation toward C. C. Huntley of *active trust and confidence*, and

that the latter was actually incapacitated for business by reason of disease.

A court of equity, under these circumstances, would impute fraud to any agreement or other transaction between the parties, for the benefit of the appellant, and to the prejudice of C. C. Huntley; or, at least, require the former, before allowing him to avail himself of it, to vindicate the transaction as free from every shadow of suspicion, and show *affirmatively* that it was not the result of the influential position of the appellant, on the one hand, or the feeble condition of the defendant on the other. (1 Perry on Trusts, secs. 189, 190, 193, 203, 204, 209, 210; Kerr on Frauds, Am. ed., p. 153; Story's Equity Jurisp., secs. 234, 307, 315, 323, 329; Brooke *v.* Berry, 2 Gill., 83; Gibson *v.* Jeyes, 6 Vesey, 275.)

The Court cannot find, from the evidence, that Charles C. Huntley ever read the paper in question, much less that it was explained to him by these parties, and that he fully understood the effect that might be sought to be given to it by the appellant.

Mr. Barlow does not really even know where it was signed. He says: "I think it was signed at the Arlington. I should rather be inclined to *think* it was executed there, because Mr. Huntley was then in a *feeble condition*, and *I see he signed it.*" He further says, in reply to the question, "Have you any recollection whether C. C. Huntley read the paper, or whether it was read to him before he signed it?"—"*I have not any recollection about that.*" (See Test. Barlow, *supra.*)

The appellant, in his cross-examination, said that he did not remember whether the paper was read to C. C. Huntley, or whether he read it himself—*it was one way or the other.* (Rec., p. 35.) On re-examination, he said he *knew* that "it was read to him, and that he also read it over himself." (Rec., p. 51.)

C. C. Huntley testified that he remembered giving Bar-

low a power of attorney, but had no recollection of the execution of any paper containing an admission that appellant had an interest with him in the Northwest Stage Company; (Rec., pp. 101, 102, fol. 133); and that no copy was given to him, at the time, of the paper called Exhibit S. S. H. No. 1, and that he never had a copy. (Rec., pp. 120, 121.)

It is quite certain that if any copy of the paper was made for him, it was kept by the appellant, who was in entire charge of his affairs, and was not given to C. C. Huntley in his sick-room at the Arlington, on the eve of his departure for Europe.

At any rate, the appellant has not shown, as he was bound to show, if he would seek to take advantage of this paper as a *different* thing from what Barlow intended it to be, and to employ it for any purpose other than that for which it was prepared by Barlow, and as an agreement or binding admission, on the part of C. C. Huntley, against his interest, in respect to the property in question, that everything was fair in regard to the transaction, that notwithstanding his condition, C. C. Huntley fully understood every possible effect that might be given to it, and with this knowledge deliberately executed the paper, that the parties were, notwithstanding the relation between them, substantially at arm's-length and on an equal footing, and that nothing happened which might not have happened if no such relation existed, and C. C. Huntley had been, at that time, in firm health.

Fourth.

The facts in regard to certain transactions, in 1876, *relied on by the appellant in his testimony in this case.*

1. The first transaction is the giving of certain notes for $27,758.18, signed by the appellant for C. C. and S. S. Huntley, February 1, 1876, and given to Mr. Barlow. (See Exhibit S. S. H. No. 3, Rec., p. 62.)

The circumstances under which these notes were given are stated by Mr. Wilson, in his testimony, as follows:

"My recollection is, that in February, 1876, it was thought desirable to have a settlement with Mr. Barlow, as to the operations of the Northwestern Stage Company up to that time, and Mr. Barlow and S. S. Huntley and C. C. Huntley met in my office, and Mr. Barlow presented his accounts. They related to matters of which I had no knowledge whatever, and I did not undertake or assume to give any advice, except as I now explain.

"Mr. Barlow claimed some allowance, to which C. C. Huntley objected. The reasons of the objection, and the nature of the claims of Barlow for the credit, I did not understand; and when C. C. Huntley declined to sign the note that represented the balance due Barlow at that time, I stated to Mr. S. S. Huntley that if he thought it proper and best to do so, as the representative of C. C. Huntley, and holding his power of attorney, he should exercise his best judgment, and do what he thought was right, and sign the notes, if he thought proper. C. C. Huntley was not present when the notes were signed. He left the room, refusing to sign them. At the time the notes were signed, it was explained by Mr. Barlow, that, although the business of the company had been a losing one up to that time, the future profits to be realized would pay those notes.

"After the notes were signed, Mr. Barlow stated that they ought to be secured, and a deed of trust was executed by C. C. Huntley alone on all C. C. Huntley's real estate in the District of Columbia, which he alone owned; and that deed of trust still remains in force to this day. The deed was executed by C. C. Huntley and his wife, and was in trust to secure these notes and some others. At that time I remember that I was anxious that some definite understanding should be arrived at as to the interest of S. S. Huntley in the business, and urged that something should be done to settle it. S. S. Huntley did not at that time claim that the stock or the one-half interest of Parker had been purchased for him, and that he was to have it without paying for it. All that was communicated to me by him or C. C. Huntley in relation to his interest was that he had an interest in the profits that might be realized from the

business; and as, up to that time, there had been nothing but losses, I didn't understand (though I thought there should be a definite understanding) how the accounts were ultimately to be settled. *I have no recollection whatever of ever having had any conversation, or hearing any conversation, with S. S. Huntley, or of hearing any conversation between S. S. and C. C. Huntley, as to the value of S. S. Huntley's services to C. C. Huntley, or that he ever named any figure at which he estimated their worth; nor did I ever hear of any proposition to give up his interest if C. C. Huntley would pay him what his services were worth; nor did I ever hear him say that he had not been paid for services he had rendered to C. C. Huntley.* If any such conversation occurred, and if C. C. Huntley had ever admitted that S. S. Huntley's services were worth $45,000, and that he had not been paid for them, I certainly should have remembered such a conversation." (Rec., pp. 109, 110)

The deed of trust executed by Charles C. Huntley and wife August 11, 1876, on real estate in Washington, in favor of Barlow, to secure these notes for $27,758, and other indebtedness to Barlow, is in evidence in the case, (Rec., pp. 121 *et seq.*,) and is referred to in the testimony of Mr. Wilson, (*Ib.*, p. 117, fol. 154,) and in that of Mr. Barlow. (*Ib.*, pp. 128, 129.)

It appears that all the money paid, and all the security given, on account of his interest in the Northwest Stage Company, was paid and given by C. C. Huntley, and that not a dollar of money or security was paid or given by the appellant.

2. The second transaction relied on is a release executed by J. L. Sanderson in April, 1876, on his purchase for $20,000 of the interest of C. C. Huntley in the California and Oregon Stage Company, the history of which is stated by Mr. Wilson. The release is Exhibit S. S. H. No. 2. (Rec., p. 62.)

Mr. Wilson testifies as follows:

"After that settlement, in April, I think, in the year

1876, an effort was made by Sanderson to buy out Huntley's interest in the Oregon and California Stage Companies, and a sale was made, Sanderson buying out the interest, and paying therefor the sum of $20,000. Sanderson, instead of paying the money for the purchase, turned it over to Mr. Barlow, and Mr. Barlow, on the 1st of April, 1876, gave his receipt, which is in my handwriting, and which is in evidence, and at the same time a paper was executed, which is also in my handwriting, signed by J. S. Sanderson, releasing S. S. Huntley and C. C. Huntley from all obligations in relation to that line, the Northwestern Stage Company. Those two papers in my handwriting were not written by me with any knowledge or information received from any person that S. S. Huntley was the owner of one-half of all the interest standing in C. C. Huntley's name in the Oregon and California and Northwestern Stage Companies, but were written with the information that S. S. Huntley did have, or claimed to have, some interest in those companies, the nature of which I was not then informed I did not know until the bill in this case was filed that S. S. Huntley claimed to be the owner of one-half of the interest of C. C. Huntley in those two Companies, by reason of the services he had rendered to C. C. Huntley prior to the 1st day of July, 1874. The general power of attorney given by C. C. Huntley to S. S. Huntley I have seen, but have not got in my possession. It was sufficient, according to my recollection of it, to authorize S. S. Huntley to act for and represent C. C. Huntley in all matters pertaining to his business and personal estate. I know that the sale to Sanderson was made after consultation with me. I advised it strenuously, because at that time the Oregon and California Stage Company had been losing money." (Rec., p. 110.)

3. The great significance of this testimony is, that S. S. Huntley, in these conversations and transactions, never claimed that he had acquired a sixth interest in this Company under such a contract with the defendant, C. C. Huntley, as he alleges in his testimony in this case, and that it was not until he filed this bill, in December, 1878, more than four year after the pretended contract, that it was known to C. C. Huntley, or his counsel, or to Mr.

Barlow, that he claimed the absolute and unincumbered ownership of a share in this Company.

Nor was this bill filed until after the institution of the suit of *C. C. Huntley* v. *S. S. Huntley*, (No. 6,558, in Equity,) in which the Court below rendered a decree against this appellant for a large balance due C. C. Huntley, on the settlement of their accounts as partners in certain mail contracts.

The record of that suit is in evidence in this case. (Rec., pp. 172–220.)

FIFTH.

The pretended consideration for the contract asserted by the plaintiff in his testimony.

1. The plaintiff found it necessary, of course, to establish a consideration for the contract alleged to have been made by C. C. Huntley, in 1874; and this he attempts to do by swearing that he was paid nothing, and received little, or nothing, for all his services to C. C. Huntley, during the *eight years previous*.

It will be observed, from his testimony, that he is apparently uncertain, from time to time, whether to place his reliance on an alleged indebtedness of defendant for services as clerk, manager, &c., or an alleged unsettled account upon contracts, in which he vaguely professes to have had an interest with C. C. Huntley prior to the date of the alleged conversation with him at Salt Lake City. The two things are, however, so intermingled and confused, in the testimony, that it is apparent the plaintiff hoped to get the benefit of both, while definitely committing himself to neither, as a final basis for the asserted contract.

The plaintiff was the clerk, manager, or agent of Charles C. Huntley, and in that capacity collected all the moneys received in the business, and could use them for whatever purpose he saw fit; and yet no *settled accounts*, no *state-*

ments of *accounts*, and no *books* of any kind or description, are produced to prove any indebtedness of the defendant to him at the time of the alleged contract.

This must be deemed conclusive against the pretension of indebtedness, upon general principles of law; and upon the facts of this case it is especially so.

The plaintiff at first said that "our whole business for that entire length of time (eight years) had never been settled," and that there were "*no regular books kept by which to settle our accounts for that whole time.*" (Rec., p. 23.)

"There was never any regular set of books kept in regard to the profits on these routes, *or in connection with our business, whatever.*" (Rec., p. 23.)

Afterward, on his re-examination, plaintiff said he wanted to *modify* this, and say "that there were books kept in Montana, in Boise City, Wyoming, and here, but they never were all put together and balanced." (Rec., p. 40.)

Plaintiff testifies also as follows, on cross-examination:

"91 Q. Did you have an opportunity to take from the moneys received from the business such sums as you thought necessary for your expenses and compensation?

"A. I had charge of all the money collected in the stage and express business in Montana, and could use it for whatever purpose I saw fit.

"92 Q. Did you keep an account of your own personal expenditures?

"A. I have no account.

"93 Q. I said did you keep an account?

"A. I kept books and accounts of the receipts of all the roads and deposited in the bank.

"94 Q. Did you have authority to check on the bank for any sum that you might deem necessary?

"A. Yes, sir; I deposited in the bank and checked out.

"95 Q. In whose name?

"A. C. C. Huntley's.

"96 Q. Did you keep an account of your own personal expenditures?

"A. Yes, sir.
"97 Q. Have you got that?
"A. I have not.
"98 Q. Is it in existence?
"A. I looked for it while in Montana last summer, but I could not find it. I left all the books there, *such as we did have*, in a safe, and the safe has been taken and all the proceeds. I cannot find it." (Deposition of S. S. Huntley, Rec., pp. 30, 31.)

Appellant was notified to produce all books, papers, &c., in his possession or control showing the moneys expended by him, of the moneys belonging to C. C. Huntley, prior to July 1, 1874, and particularly showing the moneys of C. C. Huntley drawn or received by him, and expended for his own personal use and benefit, prior to July 1, 1874. (Rec., p. 147.)

In answer to this notice, appellant produced no books, and failed to account, in any satisfactory way, for the absence of such as he said had been kept. He produced all the checks that, he said, he had in his possession that he was able to find, up to 1874.

"Q. And you have no books of any kind showing the transactions prior to 1874?
"A. No, sir; I cannot find any.
"Q. The checks that are described in this schedule, that you have introduced, were for your own personal use?
"A. Yes, sir; as near as I can get at it and figure them out, they are generally marked for myself.
"Q. In keeping the books that were kept, when these checks were given, on what account would they appear?
"A. There was no real keeping of books about it, only as the statements were given by the banks, with the surrendered vouchers, and then I would examine and check them off to see that they were all right, and that was about the extent of it." (Rec., p. 150, fol. 202.)

In his deposition he stated that he had *all the checks for*

the several years previous to 1874, *and they will show what they are drawn for; and that he was in the habit of marking on each check what it was for.* (Rec., p. 53.)

In answer to the above call he produced a few checks, some for large amounts, and testified as follows:

"Q. Was any account ever kept, or rendered, showing what disposition was actually made of the moneys that are described in these checks?

"A. No, sir; there never was any account kept showing the amount of money drawn, or for what purpose used; in fact, there was no account kept of these checks, except when the statements were rendered and the vouchers surrendered by the banks. They were checked off and marked '*correct.*'" (Rec., p. 152.)

There is more testimony of that kind, but enough has been exhibited to show that his statement as to C. C. Huntley being indebted to him, in July, 1874, (he says to the amount of $75,000 to $100,000,) cannot be judicially relied upon as proving any such fact.

2. We have supposed the law to be well settled, that it was the duty of appellant, as agent, to keep and furnish accounts which should show whether, or to what extent, C. C. Huntley was indebted to him; and, not having done so, it will be presumed that, having the power to pay himself currently, as he testifies he had, he exercised the power for his own benefit.

Story says:

"Courts of equity adopted very enlarged views in regard to the rights and duties of agents; and in all cases where the duty of keeping regular accounts and vouchers is imposed upon them, they will take care that the omission to do so shall not be used as the means of escaping responsibility, or of obtaining undue recompense. If, therefore, an agent does not, under such circumstances, keep regular accounts and vouchers, he will not be allowed the compensation which otherwise would belong to his agency." (Equity

Jurisprudence, sec. 468; see White *v.* Lady Lincoln, 8 Ves., 363; Lupton *v.* White, 15 Ves., 441.)

Judge Story, in his work on *Agency*, also states that it is the duty of an agent to keep regular accounts of all his transactions on behalf of his principal, not only of his payments and disbursements, but also of his receipts, and to render such accounts to his principal at all reasonable times, without any suppression, concealment, or overcharge; (Story on Agency, section 203;) "and if this duty is not faithfully performed, the omission will always be construed unfavorably to the rights of the agent, and care will be taken that the principal shall not suffer thereby." (Section 332.)

SIXTH.

The proceeds of the sale and business of the Northwest Stage Company, received by Mr. Barlow, are, in no view, sufficient to reimburse to C. C. Huntley the actual cost of the one-sixth interest purchased of J. W. Parker in 1874.

In June, 1874, C. C. Huntley, for a one-third interest in the Northwest Stage Company and a one-fourth interest in the Oregon and California Stage Company, paid $75,000, as is shown in the bill of sale from Parker.

Mr. Barlow thereupon purchased of C. C. Huntley one-half of the one-third interest in the Northwest Stage Company, so purchased by Huntley of Parker, and paid him therefor $30,000.

This made the actual cost to Huntley of the one-half of the one-third interest in the Northwest Stage Company, purchased of Parker, which he retained, and of the one-fourth interest in the Oregon and California Stage Company, which he also purchased of Parker, $45,000.

Subsequently, two fourth interests in the Oregon and California Company were sold to J. L. Sanderson for $20,000. The one-fourth purchased of Parker, therefore,

brought $10,000, which made the cost to Huntley, of the one-sixth interest in the Northwest Stage Company, purchased of Parker, $35,000.

It is claimed by the appellant that at the time of the purchase of Parker's interest there was in the hands of Barlow a large sum of money belonging to the Northwest Stage Company, as undivided profits for the term ending June 30, 1874, and that C. C. Huntley became by the purchase entitled to share in these profits, which materially reduced the cost of the Parker purchase.

That there were then any undivided profits, is emphatically denied by Barlow. (Rec., p. 59.) If there were any such profits, they were quickly consumed in the prosecution of the business; and in February, 1876, the Huntley interest in the two Companies was found indebted to Barlow in the sum of $27,758.05, for which amount notes were given to Barlow.

As the result of the business operations of the Northwest Stage Company for the term ending June 30, 1878, Mr. Barlow realized $255,450.39, no dividends or division of profits having been hitherto made.

The sum named represents the net earnings of the Company, and the proceeds of the sale of all its property.

The Huntley interest, composed of the one-third originally owned by C. C. Huntley and the one-sixth purchased by him of Parker, is entitled, independently of the moneys due Barlow, to one-third of $255,450.39, which is.....	$85,150 13
The one-sixth interest claimed by plaintiff is entitled to one-half of this sum, which is.	42,575 06
But there is properly chargeable against this interest one-half of the indebtedness due Barlow, which is one-half of $27,758.05.	13,879 02
Net amount payable in respect of one-sixth interest.....	$28,696 04

The net cost of the interest to C. C. Huntley, as has been stated, after crediting the money realized from the sale of the one-fourth interest in the Oregon and California Stage Company, was $35,000.

It plainly and incontrovertibly appears, then, that not one penny of profit has been realized from the Parker purchase, but that C. C. Huntley, after he has been paid the sum of $28,696.04, due in respect of said one-sixth interest, will still be out of pocket in the sum of $6,303.96, and will have lost the interest on his investment of $35,000 for over six years.

The actual loss occasioned to C. C. Huntley by the purchase of the Parker interest is equally apparent if the transaction be stated in another way.

The first cost of the interests purchased of Parker was		$75,000 00
There was received from Barlow for one-half of the one-third interest in the Northwest Stage Company	$30,000	
There was received from Sanderson for the one-fourth interest in the Oregon and California Company	10,000	
		40,000 00
The cost of the one-sixth interest in the Northwest Stage Company purchased of Parker, and retained, was therefore		$35,000 00
There is due Barlow in respect of this interest one-half of $27,758.05		13,879 02
Total cost of the one-sixth interest claimed by plaintiff, and liabilities thereon		$48,879 02
Amount in the hands of Barlow in respect of this one-sixth interest		42,575 06
Excess of cost and liabilities over proceeds		$6,303 96

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